S. Hrg. 100-1009, Pt. 7

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

APRIL 28, JUNE 13, 22, AND 29, 1988

Part 7

Serial No. J-100-8

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
97-186 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

5521-40

COMMITTEE ON THE JUDICIARY

JOSEPH R. BIDEN, Jr., Delaware, *Chairman*

EDWARD M. KENNEDY, Massachusetts	STROM THURMOND, South Carolina
ROBERT C. BYRD, West Virginia	ORRIN G. HATCH, Utah
HOWARD M. METZENBAUM, Ohio	ALAN K. SIMPSON, Wyoming
DENNIS DeCONCINI, Arizona	CHARLES GRASSLEY, Iowa
PATRICK J. LEAHY, Vermont	ARLEN SPECTER, Pennsylvania
HOWELL HEFLIN, Alabama	GORDON J. HUMPHREY, New Hampshire
PAUL SIMON, Illinois	

Mark H. Gitenstein, *Chief Counsel*
Diana Huffman, *Staff Director*
Terry L. Wooten, *Minority Chief Counsel*
R.J. Duke Short, *Minority Staff Director*

CONTENTS

THURSDAY, APRIL 28, 1988

STATEMENTS

Page
Inouye, Hon. Daniel K 1
    Prepared statement 2
Matsunaga, Hon. Spark 25
Bradley, Hon. Bill 26
Lautenberg, Hon. Frank 27
Trible, Hon. Paul S., Jr 33
Bateman, Hon. Herbert, Representative from Virginia 34
Warner, Hon. John W 34
    Prepared statement 35
Simpson, Hon. Alan K 38

TESTIMONY OF NOMINEES

Lifland, John C., to be U.S. district judge, District of New Jersey 39
Ezra, David A., to be U.S. district judge, District of Hawaii 44
Mason, Shannon T., Jr., to be U.S. district judge, Eastern District of Virginia 65
Flores-Hughes, Grace, to be Director, Community Relations Service, U.S. Department of Justice 162

WITNESS

Blayton, Oscar, president, Newport News, Virginia branch, National Association for the Advancement of Colored People 75

QUESTIONNAIRES AND OTHER SUBMISSIONS

Ezra, David A.:
    Response to questions 50
    Biography 221
    Questionnaire 222
    Letter from the American Bar Association 251
Flores-Hughes, Grace:
    Biography 286
    Questionnaire 287
Inouye, Hon. Daniel K.:
    Report of Hawaii Federal Selection Commission 3
    Letters of support for nominee David A. Ezra 14
Lautenberg, Hon. Frank R.: Letter from the Association of the Federal Bar of the State of New Jersey 29
Lifland, John C.:
    Biography 171
    Questionnaire 172
    Letter from the American Bar Association 220
Mason, Shannon T., Jr.:
    Response to questions 71
    Biography 252
    Questionnaire 253
    Letter from the American Bar Association 284
Metzenbaum, Hon. Howard M.:
    Statistics on judicial nominations processing 41
    Release 47

Page
Metzenbaum, Hon. Howard M.—Continued
  Letter to Senator Trible from Oscar H. Blayton, in opposition to nominee Shannon T. Mason, Jr 76
  Letter to U.S. Senate Committee on the Judiciary, also in opposition to nominee 79
  Articles by Douglas Ashley, in the Daily Press, Newport News, VA 84
  Letters in opposition to nominee Shannon T. Mason, Jr 90
  Text of interview with Shannon Mason 104
  Letter to Senator Simpson from Staff Director Diana Huffman confirming agreement to place nominee on committee agenda 285
Thurmond, Hon. Strom: Statement from Congressman Dean A. Gallo, Representative from New Jersey 32

MONDAY, JUNE 13, 1988

Statements

Leahy, Hon. Patrick J 305
Wilson, Hon. Pete 321

Testimony of Nominee

Walker, Vaughn R., to be U.S. district judge, Northern District of California ... 326

Witnesses

Margolin, Ephraim, Esq., San Francisco, CA 384
Panel consisting of Mary Dunlap, Esq., San Francisco, CA; and Abby Ginzberg, Esq., San Francisco, CA; and T.J. Anthony, San Francisco, CA 407

Questionnaires and Other Submissions

Anthony, T.J.:
  Testimony 432
  Prepared statement 435
Dunlap, Mary:
  Testimony 407
  Supplementary statement 492
Ginzberg, Abby:
  Testimony 411
  Prepared statement 416
  Supplementary statement 501
    Addendum of press release, newspaper articles, and letter from Dick Schapp, ABC News 509
Leahy, Hon. Patrick J.:
  Letter to Senator Thurmond concerning the processing of nominees in the Senate Judiciary Committee 306, 311
  Letter from Judge Anthony M. Kennedy to Anthony B. Diepenbrock, Esq., legal counsel of the Olympic Club, re concerning discrimination of members 331
  Letter from Mary C. Dunlap, Esq., offer to settle case 339
    Response by Vaughn R. Walker, Esq 341
  Letter from Mary C. Dunlap, Esq. to Vaughn Walker, Esq., re liens on real property 344
    Subsequent correspondence 346
  Letter to Peter Ueberroth, commissioner, Major League Baseball, from Bob Helmick, president, U.S. Olympic Committee, re lien on property of Dr. Waddell 452
  Résumé of Mary Dunlap 479
Margolin, Ephraim: Letter in lieu of prepared statement 387
Thurmond, Hon. Strom:
  Letter from the Richard Kline, counselor for the U.S. Olympic Committee, re Gay Olympic case 393
  Letter from Mary C. Dunlap, re attorneys fees 396
  Joint press release 398
    Subsequent correspondence 399
  Letter from the Bar Association of San Francisco, re rating of nominee 461
    Subsequent correspondence 474

Page

Walker, Vaughn R.:
  Response to questions 371
  Letter from the American Bar Association 599
  Biography 618
  Questionnaire 619

APPENDIX A

Submissions concerning *International Olympic Committee* v. *San Francisco Arts and Athletics, Inc.*:
  I. Submission of Mary C. Dunlap, Esq., to Samuel L. Williams, Esq., November 12, 1987 518
  II. Letter from Vaughn R. Walker, Esq., to Steven J. Metalitz, March 25, 1988 535
  III. Memorandum from Ms. Dunlap to Mr. Metalitz, April 7, 1988 553
  IV. Correspondence between Judiciary Committee and Judith Baer, Esq., June 27 and July 28, 1988 566
  V. Opinion letter prepared by Prof. Pierre R. Loiseaux, July 5, 1988 586

APPENDIX B

Additional letters and statements from:
  Jerome B. Falk, Jr., of Howard, Rice, Nemerovski, Canady, Robertson & Falk 592
  Pacific Telesis Group 597
  American Bar Association 599
  James J. Brosnahan, of Morrison & Foerster 600
  The Lawyer' Club of San Francisco 602
  A. James Robertson II 605
  Board of Supervisors, city and county of San Francisco 608
  Mary B. Cranston, of Pillsbury, Madison & Sutro 611
  La Raza Lawyers Association of San Francisco 613
  San Francisco Women Lawyers Alliance 614
  Office of City Attorney, City and County of San Francisco 616

APPENDIX C

Biography 618
Questionnaire 619

WEDNESDAY, JUNE 22, 1988

STATEMENTS

Riegle, Hon. Donald W., Jr 663
Kildee, Hon. Dale E., Representative from Michigan 665
Helms, Hon. Jesse 666

TESTIMONY OF NOMINEES

Gadola, Paul V., to be U.S. district judge, Eastern District of Michigan 669
Voorhees, Richard L., to be U.S. district judge, Western District of North Carolina 697

QUESTIONNAIRES AND OTHER SUBMISSIONS

Gadola, Paul V.:
  Response to questions 681
  Biography 717
  Questionnaire 718
Voorhees, Richard L.:
  List of cases handled by the North Carolina Fund for Individual Rights 701
  Letter from Gene Patterson, J.P. Stevens employee, re unionization of plant 711
  Questionnaire 754
  Letter from the American Bar Association 777

WEDNESDAY, JUNE 29, 1988

STATEMENTS

Page
Armstrong, Hon. William L ... 780
    Prepared statement ... 783
Ford, Hon. Wendell H ... 787
McConnell, Hon. Mitch ... 788
    Prepared statement ... 790
Callahan, Hon. Sonny, Representative from Alabama ... 793
Heflin, Hon. Howell ... 875

TESTIMONY OF NOMINEES

Abram, Donald E., to be U.S. district judge, District of Colorado ... 797
Butler, Charles R., Jr., to be U.S. district judge, Southern District of Alabama. 819
Forester, Karl S., to be U.S. district judge, Eastern District of Kentucky ... 1043

WITNESS

Travis, William T. Mobile, AL ... 877

QUESTIONNAIRES AND OTHER SUBMISSIONS

Abram, Donald E.:
    Response to questions ... 805, 809
    Biography ... 1063
    Questionnaire ... 1064
    Letter from the American Bar Association ... 1086
Butler, Charles R., Jr.:
    Photostatic copy of records pertaining to the Mobile County Criminal Court dealing with Evelyn Jordan ... 836
    Mobile Bar Association Fee Dispute Committee opinion ... 841
    Order of Judge Robert Kendall ... 846
    Letter and order of the Circuit Court in the *Altmayer* v. *Langan* case ... 850
        Subsequent correspondence ... 863
Forester, Karl S.:
    Response to questions ... 1046
    Biography ... 1128
    Questionnaire ... 1129
    Letter from the American Bar Association ... 1158
Leahy, Hon. Patrick, J.:
    Statistics of the Pueblo District Court ... 800
    Letter from Charles A. Graddick, re allegation regarding Mod Squad ... 824
    Letter from Doyle L. Coats, re involvement of Barbara Ann Wright ... 827
    Affidavit of Robert C. Campbell III ... 829
    Letter by Kater Williams, re efforts of Charles R. Butler in reducing crime ... 832
Thurmond, Hon. Strom: Memorandum by Senator Simpson, re scheduling of nominees ... 796
Travis, William T.:
    Newspaper articles about Evelyn Jordan being accused of murder ... 881
    Statements to police ... 891
    Newspaper articles about possible wrongdoing by members of the Mobile County Sheriff's Department elite Mod Squad narcotics unit ... 896
    Response to questions ... 900
    Biography ... 1087
    Questionnaire ... 1088

ALPHABETICAL LISTING OF NOMINEES FOR FEDERAL APPOINTMENTS

Abram, Donald E., to be U.S. district judge, District of Colorado ... 797
Butler, Charles R., Jr., to be U.S. district judge, Southern District of Alabama. 819
Ezra, David A., to be U.S. district judge, District of Hawaii ... 44
Flores-Hughes, Grace, to be Director, Community Relations Service, U.S. Department of Justice ... 162
Forester, Karl S., to be U.S. district judge, Eastern District of Kentucky ... 1043
Gadola, Paul V., to be U.S. district judge, Eastern District of Michigan ... 669

Page
Lifland, John C., to be U.S. district judge, District of New Jersey 39
Mason, Shannon T., Jr., to be U.S. district judge, Eastern District of Virginia.. 65
Voorhees, Richard L., to be U.S. district judge, Western District of North Carolina.. 697
Walker, Vaughn R., to be U.S. district judge, Northern District of California... 326

CONFIRMATION HEARING ON: JOHN C. LIFLAND, DAVID A. EZRA, SHANNON T. MASON, JR., AND GRACE FLORES-HUGHES

THURSDAY, APRIL 28, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:45 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard Metzenbaum (acting chairman) presiding.

Also present: Senators Thurmond and Simon.

Staff present: Steven J. Metalitz, chief nominations counsel; Ronald Legrand, chief investigator; Andrew Rainer, investigative counsel; Frank Klonoski, minority investigator.

Senator THURMOND. The committee will come to order.

Senator Metzenbaum has been delayed and his staff says he would like for me to just go ahead and open the meeting. I know you Senators are busy, so we will take you all first. The first ones we have on the list are Senator Inouye and Senator Matsunaga. You gentlemen come around.

I believe you are here in behalf of Mr. Ezra to testify and we are very pleased to have you. Senator, you may proceed.

STATEMENT OF HON. DANIEL K. INOUYE, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator INOUYE. Mr. Chairman and distinguished members of the committee, I thank you for this opportunity to speak in support of the nomination of Mr. David Ezra of Honolulu to serve as judge of the U.S. District Court for the District of Hawaii.

Mr. Chairman, in 1979 Senator Matsunaga and I, together with the Hawaii Bar Association, established the Hawaii Judicial Commission, and this commission advises and recommends on nominations for the position of Federal judges.

Mr. Ezra's nomination was duly submitted to this commission for review and comment and the commission, upon investigation, hearings, and such, recommended unanimously the confirmation of Mr. Ezra to serve as judge of the U.S. District Court of the District of Hawaii.

Mr. Chairman, most respectfully, I recommend that the commission's report be considered and I ask that this report be made part of the record.

Senator THURMOND. Without objection, so ordered.

[The prepared statement, report, and letters of support follow:]

STATEMENT OF SENATOR DANIEL K. INOUYE

NOMINATION OF DAVID EZRA

BEFORE THE SENATE JUDICIARY COMMITTEE

April 28, 1988

Mr. Chairman: Thank you for this opportunity to speak in support of the nomination of Mr. David Ezra to serve as a United States District Court Judge for the District of Hawaii.

In 1979, the Hawaii State Bar Association, Senator Spark Matsunaga, and I established the Hawaii Commission for Federal Judicial and United States Attorney Appointments, to advise us on nominations for these positions.

Mr. Ezra's nomination was submitted to the Commission for review and comment. The Commission's report recommends the confirmation of Mr. Ezra to serve as a United States District Court judge. I respectfully request that the Commission's report be included in the record.

I urge this Committee to carefully examine Mr. Ezra's record and accomplishments. I further request that he receive this Committee's full and fair consideration.

3/23

Hawaii Federal Selection Commission
c/o 1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813
(808) 524-1433

December 22, 1987

The Honorable Daniel K. Inouye
United States Senator
Prince Kuhio Federal Building,
Room 7325
300 Ala Moana Boulevard
Honolulu, Hawaii 96850

Dear Senator Inouye:

The Hawaii Commission for Federal Judicial and United States Attorney Appointments submits this report letter pursuant to the Charter which created the Commission in 1979 and was amended in July, 1986.

Paragraph 4 of the Charter provides that:

> If the President nominates for confirmation by the United States Senate a person not included on the Commission's certified list of candidates, the Senators shall transmit the name of the nominee to the Chairman of the Commission within 48 hours of its receipt by the Senate.

The Commission then has two weeks within which to submit to each United States Senator from Hawaii a report which must address four specified subjects noted in

4/23

paragraph 4 and consider the personal and professional qualities listed in paragraph 6 of the Charter.

On December 7, 1987, this Commission received from the United States Senators from Hawaii the name of Mr. David A. Ezra as a nominee by the President of the United States for the position of United States District Judge for the District of Hawaii.

The Commission met twice during the weeks of December 7 and 14, 1987. Six of the nine members were present at each meeting and prior to each meeting two of the absent three members telephoned their proxies to the Commission Chairman.

Paragraph 4a) of the Charter requires the Commission to "make available an opportunity for comment to all interested members of the Bar and legal community" concerning the nominee's practice and conduct. Requests for comments concerning Mr. Ezra's practice of law and conduct in the State were solicited from the Judiciary, both State and Federal, the members of both the State and Federal Bars, and the legal community in the State. In addition, a notice requesting comments was published in The Honolulu Advertiser and the Honolulu Star-Bulletin.

In response to the Commission's requests for comments from members of the Bar and legal community, the Commission received several letters and two oral communications. Most of the responses were highly complimentary of Mr. Ezra and very supportive of his nomination. Attached to this report are those responses.

The Commission did receive some negative responses. Individual members of the Commission made efforts to contact the authors of negative responses in order to ascertain: (1) more specific information; and (2) whether the author would permit the Commission to disclose the identity of the author in order to allow the Commission to ask the nominee about the concerns raised in the responses. In every instance, the authors declined to permit the Commission to disclose their identities. In addition, most of the concerns raised involved generalizations or matters of subjective perception about which individuals could reasonably differ.

5/23

The Commission believes it should actively solicit comments concerning any nominee. However, when a comment is negative, a paradox is created because (1) the Commission will honor as confidential all communications unless the person contacting us authorizes us to disclose to the candidate (and others when appropriate) the identity of the person contacting the Commission but (2) unless the Commission is authorized to disclose the source of a complaint, there is virtually no way to confront or even discuss that complaint with the candidate. (The Commission notes that as to any specific complaint, it is almost impossible to deal with it by interviewing the candidate; any attempt to discuss a specific complaint in a general way with the candidate or others might make it easy to identify the source of that complaint.)

For these reasons, as to any negative comment, the Commission adopted a policy of asking the person complaining whether we had that person's authority to disclose his or her name and to discuss the substance of the complaint with the candidate.

In cases where we are given such authority, the Commission will go forward and investigate the complaint. In cases where we are not given such authority, the Commission felt that unless we could corroborate the information independently and disclose to the candidate the information without in any way compromising the integrity of the initial complainant, we would not confront the candidate concerning such information and would discount the weight given to any such complaint.

Since those who authored negative responses declined to permit the Commission to disclose their identities and permit the Commission to make specific inquiries of the nominee about the matters raised and in view of the rather general nature of most of the negative responses, the Commission could not and did not give substantial weight to the negative responses. It should be noted that no experienced, competent, and active trial attorney can avoid developing personality conflicts or avoid "rubbing" someone the wrong way. That is the nature of trial advocacy. In short, the Commission does not believe that the negative responses received were such to warrant a negative recommendation.

6/23

The Commission gave great weight to certain of the favorable letters. For example, Mr. Arthur Reinwald, a senior partner in the firm of Reinwald, O'Connor, Marrack and Hoskins, and a past president of the Hawaii State Bar Association, spoke very favorably of Mr. Ezra both in his letter, a copy of which is enclosed, and in a follow-up telephone call. In that call, Mr. Reinwald enthusiastically endorsed Mr. Ezra's integrity, competency and trial skills. (Concerning Mr. Ezra's trial skills, Mr. Reinwald noted that Mr. Ezra had tried two cases against Mr. Reinwald's partner, Mr. Dennis O'Connor, and that both Mr. Reinwald and Mr. O'Connor were highly impressed with Mr. Ezra's handling of those cases.)

Mr. Reinwald emphasized that despite the fact that Mr. Ezra and two other former partners of Mr. Reinwald's firm had withdrawn some years ago and had filed suit against the firm, Mr. Ezra settled the matter amicably and professionally. Mr. Reinwald stated he still considered Mr. Ezra a friend, remained on excellent terms with him, had seen his work on an ongoing basis, including some work Mr. Ezra had done for former clients of Mr. Reinwald's firm, and was highly impressed.

A second letter, from Mr. Vernon Hirata, executive vice-president and general counsel of Territorial Savings, a long-time and an ongoing client of Mr. Ezra and his firm, was very favorable. The Commission was impressed with that client's emphasis on Mr. Ezra's competency and sense of ethics.

The Commission reviewed the materials submitted by Mr. Ezra. Those materials were essentially the same that were submitted to the American Bar Association, Financial Disclosure Report and Asset and Income Statement. Individual members of the Commission made discreet inquiries of various persons in the community whose judgment and opinions were respected concerning Mr. Ezra. The Commission also contacted the Office of Disciplinary Counsel concerning any complaints or grievances that might have been filed against Mr. Ezra. The Office of Disciplinary Counsel reported that there had been a single inquiry concerning Mr. Ezra but it was dismissed as being totally without merit at the preliminary investigation stage. No formal proceedings were ever initiated.

7/73

On December 17, 1987, the Commission conducted an interview with Mr. Ezra.

Based upon the Commission's review of the materials submitted, inquiries made by the Commission, the responses received, and the interview conducted with the nominee, the Commission reports as follows:

A. Length and Nature of the Nominee's Practice Within the Hawaii State Bar and Federal Bar

Mr. Ezra has been licensed to practice in all of the Courts of this State and has been actively practicing in those Courts since 1972. He enjoys a general reputation for being a highly competent lawyer, careful, honest, and hard-working, and one who aggressively represents his clients. His reputation for integrity is very high.

Mr. Ezra's legal practice has been confined almost entirely to civil matters. However, early in his career, Mr. Ezra did engage in some criminal defense work. In his 15 years of practice, he has participated in a substantial amount of civil litigation at both the trial and appellate levels. Included in his practice are cases and proceedings before the bankruptcy courts and the Public Utilities Commission. Mr. Ezra also has participated in a number of arbitration proceedings both as counsel for parties and as an arbitrator.

B. Scholarly Writings and Other Activities

The Commission was not referred to any law review articles authored by the nominee. However, it is clear from the materials submitted by Mr. Ezra that he has had extensive experience and a high degree of skill in writing legal memoranda and appellate briefs. The Commission believes that these can be considered scholarly although they are not law review articles or treatises. It appears that Mr. Ezra's written legal work is careful, accurate and well-written. The Commission believes that Mr. Ezra has the requisite writing skills for the position for which he has been nominated.

The Commission notes that Mr. Ezra was an excellent law student and graduated number one in his class. He was selected to participate on the law review during his second year of law school and in his third year was

8/23

appointed to the editorial board of the law review. In addition, Mr. Ezra was selected by the faculty of St. Mary's University School of Law to teach a course in legal research and writing to first-year law students.

Since 1978, Mr. Ezra has been a member of the adjunct faculty at the William S. Richardson School of Law and the University of Hawaii. As an adjunct Professor of Law, Mr. Ezra has taught courses in legal remedies to third-year law students. He is also developing a liaison program for a clinical trial practice course.

The Commission notes that Mr. Ezra has also frequently served on the faculty of various continuing legal education courses involving civil and commercial litigation.

C. The Extent and Nature of the Nominee's Involvement in the Community

Mr. Ezra has been involved in a substantial number of community activities in the State. These activities are detailed in his response to the Commission's inquiry, a copy of which is attached to this report. Some of his activities include participation in: Hawaii State Bar Association activities; the United States Navy League; Council of Advisors, American Arbitration Association; Hawaii State Chapter, Arbitrator under the Court Annexed Arbitration Program; the Hawaii Bankers' Association; Hawaii League of Savings Institutions; Hawaii Financial Services Association; and the Mortgage Bankers Association of Hawaii. Mr. Ezra has also served in the United States military: the United States Army Reserve.

D. Recommendation of the Commission as to the Ultimate Disposition of the Nomination

The Commission unanimously believes that Mr. David A. Ezra possesses the intelligence, legal ability, integrity, independence, dedication, experience, judicial temperament, as well as the requisite personal qualities enumerated in paragraph 6 of the Charter, to be an excellent United States District Judge for the District of Hawaii. Although Mr. Ezra may not have had as much criminal law practice experience as others, the Commission does not believe that this is any ground for disqualification. The Commission unanimously recommends that the nomination of Mr.

9/23

David A. Ezra for United States District Judge for the District of Hawaii be approved.

If you have any questions or if the Commission can be of any further service, please do not hesitate to contact us.

After the completion of this report, the Commission received additional information which we have not had an opportunity to review or evaluate. As soon as we have had an opportunity to review it, we will forward a supplemental report to you.

Very truly yours,

David L. Fairbanks
Chairman, Hawaii Federal
Selection Commission

DLF:jy
Enclosures

cc: Burnham H. Greeley, Esq.
President, Hawaii State
Bar Association

Members of the Hawaii Federal
Selection Commission:

Burnham H. Greeley, Esq.
John S. Edmunds, Esq.
Mr. James Wo
Cynthia Winegar, Esq.
Mr. George Chaplin
Alvin T. Shim, Esq.
R. Charles Bocken, Esq.
Mr. Sam Okinaga

10/23

NOTICE

The Charter of the Hawaii Federal Selection Commission, as amended July, 1986, between the Hawaii State Bar Association and the two United States Senators from Hawaii provides that the Commission must submit a report to each Senator concerning a Presidential nominee for United States District Judge for the District of Hawaii, Judge of the United States Court of Appeals for the Ninth Circuit, and for United States Attorneys in Hawaii. Paragraph 4(a) of the amended Charter requires that "the Commission shall make available an opportunity for comment to all interested members of the Bar and legal community."

The President has nominated David A. Ezra, Esq., for the position of Judge of the United States District Court for the District of Hawaii. Pursuant to the amended Charter, the Commission requests that all interested members of the Bar and legal community submit comments to the Commission concerning Mr. Ezra's practice and conduct in the State and Federal courts in Hawaii. All comments should be sent to:

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

In order to complete its work within the time set forth in the amended Charter, the Commission must receive all comments not later than December 16, 1987.

David L. Fairbanks
Chairman, Hawaii Federal
Selection Commission

DEC [illegible]

Reinwald O'Connor Marrack & Hoskins

11/23

Attorneys at Law

Grosvenor Center, PRI Tower
733 Bishop Street, 24th Floor
Honolulu, Hawaii 96813-4070

P.O. Box 3199
Honolulu, Hawaii 96801-3199
Telephone: 808-524-8350
Telex 7431223 ROMHNL
Telecopier: (808) 531-8628

[illegible] B. Reinwald*
[illegible] O'Connor*
[illegible] Marrack*
[illegible]
[illegible]
[illegible]
[illegible]
James H. H. Ching
[illegible]
[illegible]
[illegible]
[illegible]

Of Counsel:
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Since 1876

December 11, 1987

Mr. David L. Fairbanks, Chairman
Hawaii Federal Selection Commission
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Re: David A. Ezra, Esq.

Dear Mr. Fairbanks:

I have known David Ezra for more than twelve years. He was with this firm for five years, as an associate and later a partner. For several years I worked closely with him, having firsthand observation of his talents and dedication to the practice of law. From the beginning, he demonstrated an excellent education and insight to be a first-class lawyer. He maintained a keen dedication to the practice, to the point that he was made a partner in this firm at least 1 year before the norm.

For the last seven years, many of us were aware of David's continued growth in the practice and his many accomplishments. His reputation among lawyers is excellent and his integrity is beyond question. Of the many lawyers mentioned in recent years as potential candidates for the Federal bench, in my opinion, David is the best qualified. If I were to rate him by the standards of the committee, I would rate David very well qualified for the position.

Very truly yours,

Arthur B. Reinwald

Arthur B. Reinwald

ABR:sp

12/23

DEC 16 1987

Territorial Savings

FINANCIAL PLAZA 900 Bishop Street • PO Box 1481 • Honolulu, Hawaii 96806 • Telephone (808) 523-0211 • Cable TERSALO Honolulu

December 16, 1987

HAND DELIVER

Hawaii Federal Judicial
  Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Re: David A. Ezra

Gentlemen:

I am writing to express my support for the nomination of David Ezra to become a judge of the United States District Court for the District of Hawaii.

I am presently general counsel of Territorial Savings and Loan Association and was head of the Legal Department of American Savings Bank prior to assuming this position.

Over the past seven years or so, I have had occasion to work closely with David Ezra in his representation of Territorial Savings and American Savings in cases and matters of major importance to the financial institutions.

In my opinion, he is one of the outstanding trial attorneys in Hawaii. Yet, he appreciates that litigation is not always in the best interest of his clients. His advice has always been ethical and within the bounds of fair play.

His actions towards and relationships with other attorneys have always been professional, and he is cognizant that his personal beliefs as to an attorneys' competence or his personal dislike for an attorney should not affect his legal judgment on the matter before him.

FSLIC

13/23

Hawaii Federal Judicial
  Selection Commission
December 16, 1987
Page 2

It is without hesitation that I recommend that your commission strongly endorse the nomination of David Ezra to be the next U. S. District Court Judge for Hawaii.

Very truly yours,

Vernon Hirata

Vernon Hirata
Executive Vice President
and General Counsel

VH:es

DEC 16 1987

14/23

Judge Daniel G. Heely

Circuit Court of the First Circuit
JUDICIARY BUILDING
P. O. BOX 619
HONOLULU, HAWAII 96809
Chambers of the First Division

December 14, 1987

David L. Fairbanks, Esq.
Hawaii Federal Selection Commission
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Fairbanks:

I am writing to respectfully recommend the appointment of David A. Ezra, Esq., to the Federal bench in Hawaii.

I have known Dave for approximately 14 years. He and I became acquainted during our early years of practicing law. I have the highest regard for Dave's integrity, legal ability and dedication to fairness within our judicial system. He will be an outstanding Federal judge for Hawaii.

Thank you.

Very truly yours,

Daniel G. Heely

DANIEL G. HEELY
CRIMINAL ADMINISTRATIVE JUDGE

cc: David Ezra, Esq.

16/23

DEC 16 1987

HERMAN & LEONG
ATTORNEYS AT LAW

Peter J. Herman
Robin J. Leong

345 Queen Street, Suite 600
Honolulu, Hawaii 96813
Tel. (808) 545-2681

December 16, 1987

HAND-DELIVERED

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Re: David A. Ezra, Esq.

Gentlemen:

I have practiced law in Hawaii for six years (and before that in California since 1971).

David Ezra and I worked together on one significant case in federal court which was active for about three years. David represented the Republican Party and I represented the League of Women Voters in the action challenging the state and federal reapportionment plan. David and I appeared together in court numerous times. He was always well-prepared, to the point, ethical, and articulate. His written briefs were excellent. He always acted very professionally.

Although I am a Democrat, I think David is well-qualified for the position of federal district court judge and should be confirmed.

Very truly yours,

HERMAN & LEONG

Peter J. Herman

PJH:im

DEC 16 1987

THOMPSON & CHAN
ATTORNEYS AT LAW

ANTHONY S. CHAN
SHAWN B. THOMPSON

JOHN R. CONRAD

P.O. Box 4699
Suite 300, Stangenwald Bldg.
119 Merchant Street
Honolulu, Hawaii 96813

Telephone: (808) 523-7727
Telecopier: (808) 523-3801

16/23

December 16, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
Davies Pacific Center, Suite 1900
841 Bishop Street
Honolulu, Hawaii 96813

Re: Nomination of David A. Ezra to the United States District Court for the District of Hawaii

Gentlemen:

We submit this letter to express our enthusiastic support for the nomination of David A. Ezra to the United States District Court for the District of Hawaii.

Each of us has known Mr. Ezra for over a decade. We believe that Mr. Ezra is well qualified to serve as a judge of the United States District Court for the District of Hawaii and would do so with distinction. We therefore urge your speedy endorsement of his nomination.

Thank you for your kind attention.

Very truly yours,

Anthony Chan

Anthony S. Chan

Shawn B. Thompson

Shawn B. Thompson

17/23

A. Peter Howell
ATTORNEY AT LAW
A LAW CORPORATION
SUITE 2616 GROSVENOR CENTER
733 BISHOP STREET
HONOLULU, HAWAII 96813-4057
PHONE (808) 524-2226

DEC 16 1987

December 14, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davis Pacific Center
841 Bishop Street
Honolulu, HI 96813

Re: David A. Ezra, Esq.

Dear Members of the Commission:

I fully support the nomination of David A. Ezra for the position of Judge of the United States District Court for the District of Hawaii.

While I have not had a great deal of personal contact with Mr. Ezra, I do know that he has a good reputation, and from everything I've seen or ready about him, I believe he would make a good United States District Judge.

Sincerely,

A. PETER HOWELL
SL

JAN 27 '88 08:48 [illegible] - HONOLULU

DEC 15 P,18

BAYS
DEAVER
HIATT
KAWACHIKA
LEZAK
Attorneys at Law

[illegible]
Honolulu, Hawaii [illegible]
P.O. Box [illegible]
Honolulu, Hawaii [illegible]
Telephone [illegible]
Telecopier [illegible]
Telex RCA [illegible]

[illegible]
[illegible]
Jerry M. Hiatt
James A. Kawachika
[illegible] Lezak
[illegible]

18/23

December 14, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Fairbanks:

Thank you for your memorandum soliciting comments with respect to the nomination of David A. Ezra, Esq. for the position of judge of the United States District Court for the District of Hawaii.

I have seen Mr. Ezra's work over a number of years as a practitioner. He has a fine mind, has always taken an orderly and aggressive approach to his cases and I think he would make an excellent federal judge.

As you know, because of the shortage of judges it is very difficult to get to trial in federal court now. I believe that Mr. Ezra should be confirmed as soon possible. Thank you for taking the time to consider these comments.

Very truly yours,

Jerry M. Hiatt

JMH:ec

DEC 14 1987

19/23

BAYS
DEAVER
HIATT
KAWACHIKA
LEZAK

December 9, 1987

David L. Fairbanks
Chairman,
Hawaii Federal Selection Commission
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Re: Nomination of David A. Ezra

Dear David:

I am writing in response to your notice. I think that David Ezra is qualified for nomination to the position of Judge of the United States District Court for the District of Hawaii and that the Commission should confirm his nomination.

Frankly, it has begun to appear to me that the appointment of a Federal Judge for our district has become a political football and that the real qualifications of the proposed applicants have become secondary. So although I am a Democrat, I think it is important that Mr. Ezra be speedily confirmed unless there are legitimate and serious questions about his qualifications.

Sincerely,

A. Bernard Bays

A. Bernard Bays

ABB:lk

20/23

BAYS
DEAVER
HIATT
KAWACHIKA
LEZAK

[illegible]
[illegible]
[illegible]

PO Box [illegible]
[illegible]

[illegible]
[illegible]
[illegible]

[illegible]
Phillip L. Deaver
[illegible] M. Hiatt
James A. Kawachika
John F. Lezak
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

December 11, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

Re: Nomination of David A. Ezra for Judge of the United States District Court for the District of Hawaii

Gentlemen:

As a member of the Hawaii Bar, I am writing to support the President's nomination of David A. Ezra for the position of Judge of the United States District Court for the District of Hawaii.

Because our areas of practice have overlapped considerably, I have had substantial dealings with Dave over the past ten years. Despite the fact that Dave has frequently been an adversary and has aggressively represented the interests of his client, I have developed great respect for Dave as a lawyer and as a person. Dave has always demonstrated the utmost competence as a lawyer, and I am confident that his abilities will enable him to do an excellent job as a judge. In addition, Dave has demonstrated qualities such as patience, tact, and respect for his fellow lawyers which suggest to me that he will have a good judicial temperament. At the same time, Dave is firm, confident, and decisive, qualities which are important in a judge, particularly in view of the burdensome caseload of our federal judiciary.

For these reasons, I believe Dave will make a fine judge and I wholeheartedly support his nomination.

Sincerely,

Phillip L. D

Phillip L. Deaver

PLD:lsg

DEC 9 1987
21/23

JOSEPH A. RYAN
Attorney at Law
1100 Alakea Street, Suite 417
Honolulu Merchandise Mart, Ewa Wing
Honolulu, Hawaii 96813-2802
Telephone: (808) 533-2487

December 8, 1987

HAWAII FEDERAL SELECTION COMMISSION
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

RE: DAVID A. EZRA, Esq.

Dear Sir:

I have been involved in litigation in which Mr. David A. Ezra was an adversary. He was skillful and well prepared. I've observed him in practice in Hawaii for about 10 years.

It is my opinion that Mr. Ezra is well qualified for the position of Judge of the United States District Court for the District of Hawaii.

This is an unsolicited letter.

Very truly yours,

Joseph A. Ryan

Joseph A. Ryan

JAR:pr

22/23

DEC 17 1987

MAURICE SAPIENZA
ATTORNEY AT LAW
A LAW CORPORATION
2875 SOUTH KING STREET
HONOLULU, HAWAII 96826
TEL. (808) [illegible]

MAURICE SAPIENZA

December 14, 1987

HAWAII FEDERAL SELECTION COMMITTEE
c/o David L. Fairbanks, Esq., Chairman
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Dear Mr. Fairbanks:

I have known David A. Ezra for over ten (10) years, both as a lawyer and as an individual. On one occasion, he represented me in a personal matter. As a lawyer, I have found him to be a man of the highest integrity and possessed of a deep knowledge of the law which only a lawyer in love with his profession can acquire. I have formed a firm respect for his legal temperament and believe that he will be a real credit to the Hawaii Bar as Judge of the United States District for the District of Hawaii.

As an individual, I have developed a real fondness for him not only because of his Holmes like sense of humor and wit but because of his real devotion to his wife and children.

I have no hesitation whatsoever in asking you to recommend David highly to Senators Inouye and Matsunaga, to whom you are required to submit your report.

Sincerely,

Maurice Sapienza

MAURICE SAPIENZA

MS/mls

[illegible] P.23

23/23

DEC 11 1987

A. WILLIAM BARLOW
ATTORNEY AT LAW
A LAW CORPORATION
SUITE 1010, AMFAC BUILDING
700 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE
[redacted]
537-2581

December 10, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

re: nomination of David A. Ezra, Esq.
as Judge of the United States District Court
for the District of Hawaii

Gentlemen:

I have known the Ezra family for more than twenty years, and David A. Ezra for most of that time. I have always been very favorably impressed with Mr. Ezra's legal competence and particularly his sensitivity to the Canons of Professional Ethics. I and many members of the legal community believe he has a fine "judicial temperment," and I am pleased to join many in this community in urging you to support his nomination. He is surely qualified for the appointment.

Sincerely,

A. WILLIAM BARLOW

AWB:rb

23/23
DEC 11 1987

A. WILLIAM BARLOW
ATTORNEY AT LAW
A LAW CORPORATION
SUITE 1010, AMFAC BUILDING
700 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE
[redacted]
537-2581

December 10, 1987

Hawaii Federal Selection Commission
c/o David L. Fairbanks, Esq.
1900 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

re: nomination of David A. Ezra, Esq.
as Judge of the United States District Court
for the District of Hawaii

Gentlemen:

I have known the Ezra family for more than twenty years, and David A. Ezra for most of that time. I have always been very favorably impressed with Mr. Ezra's legal competence and particularly his sensitivity to the Canons of Professional Ethics. I and many members of the legal community believe he has a fine "judicial temperment," and I am pleased to join many in this community in urging you to support his nomination. He is surely qualified for the appointment.

Sincerely,

A. WILLIAM BARLOW

AWB:rb

Senator **Inouye**. Most respectfully, Mr. Chairman and members of the committee, I urge this committee to favorably consider Mr. Ezra's nomination, and may the record show that I am pleased to support this nomination. I urge its immediate consideration because at the present time there is a vacancy that has not been filled for quite some time. So expeditious treatment by this committee will be most appreciated by the people of Hawaii.

I thank you very much, sir.

Senator **Thurmond**. Thank you. We are glad to have you here, Senator. We appreciate your coming over in person, and I want to congratulate Mr. Ezra for having your support—he was appointed by the President, but he has got the backing of both Senators. I congratulate you on that. Both of them are held in high esteem.

Senator Matsunaga, we will be glad to hear from you.

STATEMENT OF HON. SPARK MATSUNAGA, A U.S. SENATOR FROM THE STATE OF HAWAII

Senator **Matsunaga**. Mr. Chairman and members of the committee, it is a great pleasure indeed to join in the introduction of Mr. David Ezra of Honolulu, who has recently been nominated by President Reagan to fill a seat in the Federal District Court for the District of Hawaii. I fully support the nomination and I appreciate very much your scheduling this hearing.

As his résumé before you indicates, Mr. Ezra will be age 41 years next June. He is married to the former Judith Albach and they have three children. He attended Chaminade College in Honolulu for a year, transferred to St. Mary's University in San Antonio, Texas, where he received his B.B.A. degree magna cum laude, and his J.D. degree in 1972.

He was admitted to the Hawaii bar in the same year and has been in private practice ever since. He presently heads the law firm of Ezra, O'Connor, Moon, and Tam in Honolulu. Mr. Ezra was found to be highly qualified to serve as a Federal judge by the Hawaii Federal Judicial Selection Commission, established through the joint effort of my senior colleague, Senator Inouye, and myself, in cooperation with the Hawaii State Bar Association, to review candidates for Federal judgeships in Hawaii.

Mr. Ezra's record of outstanding achievement has earned him the respect of his colleagues and friends in Hawaii's legal community.

Mr. Chairman, the seat which Mr. Ezra is to fill is a newly created third Federal judgeship in the District of Hawaii. Hawaii was allocated this third judgeship because of the district court's extremely heavy workload and backlog. Delays in nominating a qualified candidate for this new seat have only made the situation worse.

For this reason, as a member of the Hawaii bar myself, although no longer in active practice, I am most supportive of this committee's expeditious action on the Ezra nomination, and I join Senator Inouye in urging that the nomination be favorably reported to the Senate floor.

Thank you very much.

Senator **Thurmond**. Thank you very much, Senator. We are glad to have you here. We appreciate both of you coming and testifying in person.

Senator **Inouye**. Mr. Chairman, may we be excused, sir?

Senator **Thurmond**. Yes, sir, you may be excused and we will now take the Senators from Virginia. I believe they are next. Excuse me just a minute. She says Senator Bradley is chairing a hearing. Would the Senators from Virginia mind letting him go ahead? Is that all right?

Senator **Trible**. Not at all, not at all.

Senator **Thurmond**. Senator Bradley, you come around, and Senator Lautenberg. We are very pleased to have you all here today. Mr. John C. Lifland is with you.

Senator **Bradley**. Thank you very much, Mr. Chairman.

Senator **Thurmond**. Mr. Lifland, I congratulate you upon your selection and appointment by President Reagan, and you are fortunate to have both of your able Senators here to endorse you in person.

Mr. **Lifland**. Thank you, Mr. Chairman.

Senator **Thurmond**. Senator Bradley.

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator **Bradley**. Thank you very much, Mr. Chairman. I am pleased to appear before the committee to introduce John Lifland, who has been nominated to fill the vacancy on the Federal District Court for New Jersey.

I did not know Mr. Lifland prior to his nomination, but as I have with other nominees, I asked his peers in New Jersey to comment on his qualifications and I would like to share the comments of the Association of the Federal Bar of the State of New Jersey, which appointed a committee of distinguished members to review the nomination.

Their panel consisted of a former Federal district court judge and past presidents of both the State bar and the State and Federal bar associations. Their report to me stated, in part, quote, "Every individual we interviewed spoke of Mr. Lifland in laudatory terms. Set forth below are some of the comments which we received which typify how Mr. Lifland is regarded by members of the judiciary and the trial bar. 'He is superb and possesses every quality you look for in a judge, i.e., intelligence, integrity, and temperament'; 'a stellar performer'; 'a top-drawer nomination.'

"Our association has concluded," they go on, "that Mr. Lifland is an outstanding trial lawyer, enjoys a reputation for impeccable integrity, and is exceedingly conscientious and is uniquely qualified to become a U.S. district court judge. We enthusiastically endorse Mr. Lifland and we respectfully urge you to support his nomination," end of quote.

Mr. Chairman, I share the Federal Bar Association's enthusiasm for Mr. Lifland. After graduating from Harvard Law School, he started his practice by joining his father's law firm. Following a clerkship with U.S. District Court Judge Thomas Meaney, he joined one of New Jersey's largest law firms, Stryker, Tams and Till.

Throughout his career, Mr. Lifland has provided leadership in New Jersey's legal community. He was elected a New Jersey Fellow of the American Bar Foundation and served for 9 years as a member of the New Jersey Board of Bar Examiners. He currently serves as vice president of the Association of the Federal Bar and he is actively involved in committees of the American Bar Association, the New Jersey Bar Association, and the Essex County Bar Association.

Mr. Lifland also participated in the Garden State Bar Association effort to help minority students prepare for the State bar exam. As part of this project, a number of former members of the State Board of Bar Examiners met on weekends and evenings with minority graduates of Rutgers and Seton Hall Law Schools.

His law firm provides a substantial amount of financial support to the statewide Campaign for Justice, which supports the Legal Services of New Jersey. The firm also provides both pro bono legal services and financial support to Essex-Newark Legal Services.

Mr. Lifland has contributed his time and knowledge to legal education programs sponsored by the New Jersey Institute for Continuing Legal Education, the New Jersey State Bar Association, and the Financial Executives Institute.

Mr. Chairman, the Federal District Court for New Jersey currently has 6,219 cases pending before it, the second highest load in the circuit. That is a caseload of 444 cases per judge. This backlog caused the Judicial Conference to recommend that three judges be added to the district court for New Jersey.

Given the enormous caseload, it is urgent that the current vacancy be filled, and I am extremely pleased that the Judiciary Committee has given this nomination such expeditious consideration.

From everything I have learned about Mr. Lifland, I believe he will make an excellent addition to the district court and I am pleased to recommend him for confirmation to the committee and to the Senate as a whole.

Senator METZENBAUM. I would like to say that I got tied up in a traffic jam or would have been here on time, but I am grateful to Senator Thurmond for having gone forward in my absence.

We are happy to see both my friends, Senator Lautenberg and Senator Bradley, here this morning. It is nice to have you with us, Mr. Lifland.

Mr. LIFLAND. Thank you.

STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. I thought, Mr. Chairman, you were going to criticize the Transportation Subcommittee of the Senate, and I was a little apprehensive for a moment.

Mr. Chairman, I am pleased to be here with my colleague, Senator Bradley, to introduce and commend to you, the Judiciary Committee, John C. Lifland, who has been nominated to serve on the U.S. District Court for the District of New Jersey.

Mr. Lifland is a respected and experienced member of the New Jersey bar, a graduate of Yale University and Harvard Law School, and has been a partner in a distinguished law firm in the State of

New Jersey, the law firm of Stryker, Tams and Dill. They are based in Newark, New Jersey.

He was appointed by the New Jersey Supreme Court to the State Board of Bar Examiners. As a member of the board for 9 years, he helped supervise admission to the State's legal profession.

Mr. Lifland also distinguished himself in the field of antitrust law, serving as an editor of the Antitrust Law Journal. He has also served as a vice president of the Association of the Federal Bar of New Jersey.

Mr. Chairman, I have heard from New Jersey lawyers, as did Senator Bradley, who know John Lifland. They say he is a skilled and conscientious lawyer. They say that as a judge he will be dedicated not to the service of one ideology or the other, but to the service of the law and the Constitution and, of course, that is what we are looking for.

His nomination has won the unqualified endorsement of the Association of the Federal Bar of New Jersey, and I would ask consent that a copy of the Association's letter be printed in the record.

Senator **Metzenbaum**. Without objection, so ordered.

[The letter follows:]

THE ASSOCIATION OF THE FEDERAL BAR
OF THE STATE OF NEW JERSEY

One Gateway Center - Suite 900
Newark, New Jersey 07102
(201) 622-3333

OFFICERS

Bruce I. Goldstein
President

Honorable Frederick B. Lacey
President-elect

Joel D. Siegel
First Vice President

William J. Brennan, III
Second Vice President

Frederic K. Becker
Secretary

John J. Barry
Treasurer

Vice Presidents

Richard D. Catenacci
Elizabeth F. Defeis
Stephen M. Dermer
John T. Dolan
Douglas S. Eakeley
Gerald M. Eisenstat
S. Joseph Fortunato
Barry I. Fredericks
Arthur S. Goldstein
David R. Gross
John P. Hauch, Jr.
Michael B. Himmel
Lawrence S. Horn
Cynthia M. Jacob
Joseph E. Kenney
Allan H. Klinger
John C. Lifland
Allyn Z. Lite
Honorable H. Curtis Meanor
William J. O'Shaughnessy
Daniel L. Rabinowitz
Laurence Reich
Richard D. Shapiro

ADVISORY BOARD

Hon. John F. Gerry
Hon. Robert E. Cowen
Hon. Stanley S. Brotman
Hon. Anne E. Thompson
Hon. Maryanne Trump Barry
Hon. Garrett E. Brown, Jr.
Hon. Clarkson S. Fisher
Hon. Arthur S. Lane
Hon. Herbert J. Stern
Hon. Samuel A. Alito, Jr.
Hon. Anthony T. Augelli*
Donald A. Robinson
Jonathan L. Goldstein
Thomas F. Campion
Ronald M. Sturtz
John L. McGoldrick
William B. McGuire
W. Hunt Dumont

*(1902-1985)

March 4, 1988

Honorable Joseph R. Biden Jr.
Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

This Association has in the past advised you of the results of inquiries into the backgrounds of those individuals who have been nominated for appointment to the United States District Court for the District of New Jersey. This Association is pleased to advise you of its endorsement of the nomination of John C. Lifland to be a United States District Court Judge for the District of New Jersey.

Our Association appointed a committee to investigate Mr. Lifland's qualifications to be a United States District Court Judge. The committee consisted of the following individuals:

1. Honorable Frederick B. Lacey (former United States District Court Judge for the District of New Jersey)
2. William J. Brennan, III (former President of the New Jersey State Bar Association)
3. Jonathan L. Goldstein (former United States Attorney for the District of New Jersey)
4. William B. McGuire (former President of the Association of the Federal Bar of the State of New Jersey)
5. Thomas F. Campion (former President of the Association of the Federal Bar of the State of New Jersey)
6. Gerald M. Eisenstat (First Vice President of the New Jersey State Bar Association)
7. The undersigned.

The members of the committee conducted a wide ranging inquiry into the background of Mr. Lifland. Members of the committee contacted judges before whom Mr. Lifland has appeared and trial attorneys who have served as both his co-counsel and his adversary. Every individual we interviewed spoke of Mr. Lifland in laudatory terms.

Set forth below are some of the comments which we received which typify how Mr. Lifland is regarded by members of the judiciary and the trial bar:

1. "He is superb and possesses every quality you look for in a judge, i.e., intelligence, integrity and temperament."
2. "A stellar performer."
3. "A top drawer nomination."
4. Mr. Lifland "only needs the robe" to become a superb District Court Judge.

Our Association has concluded that Mr. Lifland is an outstanding trial lawyer, enjoys a reputation for impeccable integrity, is exceedingly conscientious and is uniquely qualified to become a United States District Court Judge. We enthusiastically endorse Mr. Lifland and we respectfully urge you to support his nomination.

Very truly yours,

ASSOCIATION OF THE FEDERAL BAR
OF THE STATE OF NEW JERSEY

Bruce I

BRUCE I. GOLDSTEIN
President

BIG:CAG

Senator **Lautenberg**. Mr. Lifland has also won high marks from the ABA. He has been found well qualified and exceptionally well qualified by the members of the screening panel.

Lastly, Mr. Chairman, I want to thank the committee for moving without delay on this nomination. The New Jersey courts are overloaded. The U.S. Judicial Conference recently proposed that Congress increase by 30 percent the number of Federal district court judges in the State.

Because of the overwhelming workload of the court, cases have been transferred out of State. Judges are strained to keep up. Litigants, in the end, are not as well served as they should be.

Mr. Chairman, Mr. Lifland would be a welcome addition to the bench in New Jersey. He promises to serve the people and the law well. I commend him to you and urge you to favorably report his nomination to the full Senate.

Senator **Metzenbaum**. Strong support, Mr. Lifland. We are very much appreciative of Senator Bradley and Senator Lautenberg for joining us here this morning. We will have some questions for you, later, but I think we would like to hear from the other Senators in connection with other nominees.

Senator **Thurmond**. Mr. Chairman, in connection with this nomination, there is a statement here from Congressman Dean A. Gallo in support of the confirmation of John C. Lifland, so I will ask that to go in the record.

Senator **Metzenbaum**. Without objection, so ordered.

[The statement of Mr. Gallo follows:]

DEAN A. GALLO
11th District, New Jersey

PUBLIC WORKS AND
TRANSPORTATION COMMITTEE

SUBCOMMITTEES
WATER RESOURCES
SURFACE TRANSPORTATION

SMALL BUSINESS COMMITTEE

SUBCOMMITTEES
TRADE AND SPECIAL PROBLEMS
PROCUREMENT

REGIONAL WHIP

Congreſs of the United States
House of Repreſentatives
Waſhington, DC 20515

WASHINGTON OFFICE:
1318 Longworth Building
Washington, DC 20515
(202) 225-5034

DISTRICT OFFICES:
101 Gibraltar Drive
Suite 2-D
Parsippany-Troy Hills Twp.
Morris Plains, NJ 07950
(201) 984-0711

22 North Sussex Street
Dover, NJ 07801
(201) 328-7413

3 Fairfield Avenue
West Caldwell, NJ 07006
(201) 228-8262

STATEMENT OF CONGRESSMAN DEAN A. GALLO IN SUPPORT OF
THE CONFIRMATION OF JOHN C. LIFLAND, ESQUIRE, AS JUDGE
OF THE UNITED STATES DISTRICT COURT OF THE STATE OF NEW JERSEY
April 27, 1988

Thank you Senator Metzenbaum, Ranking Minority Member Thurmond and Members of the Committee for convening this nomination hearing.and affording me this opportunity to place on the record my high opinion of John C. Lifland, Esquire.

Mr. Lifland, currently a partner in the well-regarded firm of Stryker, Tams & Dill, is known to be a man of intelligence and integrity. He has demonstated his commitment to the law, not only as a litigator respected for his insightful thinking and thorough preparation, but also as an active member of the New Jersey Bar.

Among other things, Mr. Lifland was appointed by the Supreme Court of New Jersey to serve as Chairman of the Board of Bar Examiners. Thereafter, he worked with Project Pass which was formed to tutor and assist disadvantaged law school students to prepare for and pass the New Jersey Bar Examination.

The breadth of his courtroom experience (over 20 major matters before the District Court and the Third Circuit Court of Appeals) is complemented by his bar association and community activities.

I believe that Mr. Lifland is well qualified and I am pleased to have this opportunity to write in his behalf.

Senator **Metzenbaum**. Thank you very much.

Senator **Bradley**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. Our next Senators are Senator John Warner and Senator Paul Trible to introduce Shannon Mason.

Senator **Thurmond**. Congressman Bateman is also here.

Senator **Metzenbaum**. We are happy to have you with us as well. Senator Warner, do you want——

Senator **Warner**. Chairman Metzenbaum, may I suggest that my colleague, Mr. Trible, lead off? He had the primary responsibility in connection with this nomination and I think I should defer to him.

Senator **Metzenbaum**. We are certainly happy to have him do so. I only did it in the order of seniority.

STATEMENT OF HON. PAUL S. TRIBLE, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Trible**. Mr. Chairman, we thank you for the opportunity to appear before the committee this morning, and we are all pleased to present to the committee Mr. Shannon T. Mason, Jr., of Virginia. We are joined by Congressman Herb Bateman, who represents the First Congressional District of Virginia.

I would note for the record that Mr. Mason is joined by his lovely wife, Mary Lou, and his two sons and daughter this morning.

Skip Mason will bring to the Federal bench the personal attributes of an outstanding jurist—intellectual rigor, judicial temperament, and a wealth of experience. He has an outstanding record during his 25 years, Mr. Chairman, as a trial practitioner.

He is a respected trial lawyer. He has served for 13 years as a substitute judge in the general district courts of Newport News, Virginia. He has been an active member of local, State, and national legal associations, and he has been found well qualified by the ABA review committee.

Mr. Mason is a lifelong resident of the eastern district of Virginia. Born in Norfolk, he attended both the undergraduate and law schools of the College of William and Mary and was ranked first in his law class.

He began his legal career as a law clerk in the U.S. District Court in Eastern Virginia and has practiced in the eastern district ever since. I have no doubt that he will serve with distinction.

In addition, Mr. Chairman, his confirmation will achieve another important goal of mine. The First Congressional District has never been represented on the Federal bench. Mr. Mason's confirmation will give the citizens of the First District of Virginia, whom I have now served in Congress for 12 years, that opportunity for the first time.

I urge the committee to report this nomination quickly and favorably to the full Senate, and I thank you for permitting us to present Skip Mason today.

Senator **Metzenbaum**. Strong, encouraging support. Thank you very much, Senator Trible.

Senator Warner.

Senator **Warner**. Mr. Chairman, again, I would defer to our colleague, the distinguished Congressman from the first district. They have been close personal friends for over 20 years.

Senator **Metzenbaum**. We are delighted to have you with us, Congressman Bateman. We are very happy to hear from you, sir.

STATEMENT OF HON. HERBERT BATEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. **Bateman**. Thank you, Mr. Chairman, and distinguished members of the committee.

I am indeed delighted, and I would even have to add excited, that a day has come when, as the Congressman from the First Congressional District of Virginia, I can appear at a confirmation hearing on behalf of a candidate for the Federal District Court for the Eastern District of Virginia who would for the first time be a resident of that great congressional district that extends from the James River to the Potomac River.

It is a special pleasure to do that when the subject of this confirmation is an old and esteemed friend with whom I practiced law for some 25 years, and I emphasized esteemed friend and professional colleague.

Skip Mason is the essence of legal professionalism. He is a person of outstanding character, large ability; old enough to be mature and stable, but young enough to be vigorous and energetic and certainly very hard-working.

I have the greatest pleasure in saying how much I agree with all those things that Senator Trible has said about Shannon T. Mason, Jr. I commend him to the committee and would make a further plea for expedited action on this nomination. Our Eastern District Court in Virginia is a very, very busy court. This vacancy has been there for some time.

The judges now on the bench in that district are extremely overworked and they need the assistance that Shannon Mason would be able to give them. He will serve with distinction.

Senator **Metzenbaum**. Thank you very much, Congressman Bateman. With much higher praise, Mr. Mason, we may have to deify you instead of confirm you. [Laughter.]

Senator Warner.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Warner**. Thank you, Mr. Chairman.

I will put my statement in in terms of that deification and simply add that I have been working with my good friends and colleagues here for some many years to find an individual in this area of Virginia, as Senator Trible said, to be the first to represent the first district.

It was obvious to many of us for some years that Shannon Mason was the choice, and we are pleased today that we present him to you with unequivocal recommendations and ask that the committee expeditiously proceed with this nomination which I anticipate will be fully subscribed and approved by the Senate as a whole.

I thank the Chair.

[The statement of Senator Warner follows:]

APRIL 28, 1988
STATEMENT OF
HONORABLE JOHN W. WARNER
BEFORE THE COMMITTEE ON THE JUDICIARY
CONFIRMATION OF SHANNON T. MASON, JR.,
TO BE UNITED STATES DISTRICT JUDGE
FOR THE EASTERN DISTRICT OF VIRGINIA

THANK YOU, MR. CHAIRMAN. IT IS INDEED A PRIVILEGE AND A PLEASURE TO APPEAR BEFORE THIS COMMITTEE TODAY ON BEHALF OF SHANNON T. MASON, JR. I HAVE HAD THE PLEASURE TO KNOW MR. MASON FOR A NUMBER OF YEARS. WHILE MY COLLEAGUE FROM VIRGINIA, SENATOR TRIBLE, RECOMMENDED MR. MASON FOR THIS PARTICULAR APPOINTMENT TO THE FEDERAL BENCH, I AM HONORED TO HAVE THIS OPPORTUNITY TO VOICE MY SUPPORT FOR HIS NOMINATION.

Mr. Mason is a life long resident of the Hampton Roads area of Virginia - the area he would serve as a judge for the Eastern District of Virginia. He attended the Norfolk Division of the College of William & Mary, now Old Dominion University, and served in the armed forces. He attended one of the finest law schools in the country - the Marshall-Wythe School of Law - where he distinguished himself serving as editor of the William & Mary Law Review and graduated at the top of his class. Following law school, Mr. Mason clerked for Judge Walter E. Hoffman in the same United States District Court for which he is now being considered.

Over the course of his legal career in both Norfolk and Newport News, Virginia, Mr. Mason engaged in general practice, gaining extensive trial experience in a wide variety of legal issues. He also has served as Substitute Judge for all courts not of record in Newport News.

Mr. Mason has participated in a number of State and local Bar association activities. He has served on the Disciplinary Board of the Virginia State Bar. He has served as President of the Newport News Bar Association and as President of the Tidewater Chapter of the Federal Bar Association.

Skip Mason has a distinguished record of community service. He served on the Board of Visitors of Old Dominion University as Vice-Rector from 1982 to 1984.

MR. CHAIRMAN, SKIP MASON IS A WELL KNOWN AND RESPECTED MEMBER OF THE VIRGINIA BAR WHO BOASTS A LONG AND DISTINGUISHED RECORD OF SERVICE IN THE LEGAL PROFESSION. I KNOW SKIP WELL AND AM CONVINCED THAT HE WOULD BRING TO THIS POST EXPERIENCE, DEDICATION TO THE PRINCIPLES EMBODIED IN THE CONSTITUTION, AND A SENSITIVITY TO HOW THE LAW AFFECT CITIZENS IN THEIR EVERYDAY LIFE. HE WILL MAKE AN OUTSTANDING JUDGE, AND I AM PLEASED TO OFFER HIM MY STRONGEST SUPPORT.

Senator **Metzenbaum**. Thank you very much.

We are about to have a roll call. Thank you very much, Mr. Mason and those who are supporting him. If you would be good enough to retire from the table so that we may hear from Mr. Simpson——

Senator **Warner**. Mr. Chairman, I have a second individual who is before the committee today. I wonder if I might——

Senator **Metzenbaum**. You and Senator Simpson will be introducing Grace Flores Hughes. We are very happy to have you do so.

Senator Simpson, you could have certainly remained up here at the table; you are a member of the committee.

Senator **Simpson**. Well, I thank you, Mr. Chairman. You are kind, but I will stay here with my colleagues at the bench.

Senator **Metzenbaum**. Senator Warner.

Senator **Warner**. Thank you, Mr. Chairman.

We are gathered here today to introduce to the committee Ms. Grace Flores-Hughes, who has been nominated by President Reagan to be the Director of the Department of Justice Community Relations Service.

Ms. Hughes was appointed Acting Associate Administrator for Minority Small Business and Capital Ownership Development of the U.S. Small Business Administration on March 16, 1988, by Administrator Jim Abdnor, a former colleague.

As Acting Associate Administrator, she directs the agency's efforts to assist minority business development. Before assuming her present position, Ms. Hughes served as Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development at SBA where she assisted in the formulation and implementation of policies and programs.

Prior to joining SBA, Ms. Hughes worked at the White House in the Office of Public Liaison where her responsibilities included the preparation and presentation of policy briefings.

Ms. Hughes began her Federal Government career in 1972 as a program specialist in the Office of the Assistant Secretary for Planning and Evaluation at the Department of Health, Education and Welfare.

Ms. Hughes was born and raised in Texas. She earned a baccalaureate degree from the University of the District of Columbia and graduated from Harvard University with a master's in public administration.

She has been a visiting professor at both the University of Nebraska, Omaha Campus, and Nebraska Wesleyan University. Ms. Hughes has authored and presented a number of professional papers around the country. I am privileged to be one of the Senators to recommend her to this committee and to the Senate as a whole.

I thank the Chair.

Senator **Metzenbaum**. Thank you very much, Senator Warner.

Senator Simpson, we are very happy to have you on both sides of the table.

STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Thank you, Mr. Chairman. You have always been very courteous to me on either side of the table, even though we do enjoy whacking around in it a little, admittedly, and I have great regard for you.

Senator METZENBAUM. Thank you, sir.

Senator SIMPSON. It is very difficult for me to be at all objective. You have seen all of the record of this remarkable lady. I will not elaborate on it; it is most impressive. Here is one fine person, and I know her personally, not by just some brief encounter or something like an introduction.

My wife, Ann, and I have lived next to Harley and Grace Hughes for many months in McLean, Virginia. They are superb people. That is where you get to know people in the real course of life as neighbors, sharing things, you know, the things you do as neighbors.

So not only that, but when I was involved heavily in the immigration bill, Grace was there for a good bit of good counsel. She has a remarkable grasp of that issue. She has worked with minority groups, she is fluent in Spanish, she is absolutely superb.

I looked at the U.S. Government Manual here as to what the CRS, Community Relations Service, is, and in looking at it I cannot imagine anyone that could be more appropriate serving in it.

Amid the many things they do is to reduce conflict, increase peaceful relations among the citizens of a community; they are responsible for continuing efforts to integrate into the United States almost 180,000 Cubans and Haitians who have entered; substantially increasing the role and assisting with refugee-immigrant problems. You could not have written a job description that could be better filled but by Grace Flores-Hughes.

So I just am here to say that I recommend her highly, unhesitatingly, and without reservation. She is a fine choice, a skilled and intelligent woman, a very sensitive and bright woman, a nice neighbor and a nice friend.

America will be the better for her and the Community Relations Service should flourish under her stewardship and guidance, and I unhesitatingly recommend her to you, sir.

Senator METZENBAUM. I appreciate that very much.

Senator TRIBLE. Mr. Chairman, please let the record also reflect that I join my colleagues in recommending Grace Flores-Hughes to this committee and urging you to act promptly and favorably on her nomination.

Senator METZENBAUM. We are very happy to have you do so. A very impressive group of Senators have joined in support of your nomination and we are grateful for each of you being here with us this morning.

I think what we are going to do is recess temporarily so that Senator Thurmond and I can go over and vote.

Senator WARNER. Mr. Chairman, may we also thank you and the distinguished ranking member? We through the years have many opportunities to come before this committee. The hallmark of this committee is senatorial courtesy.

Senator **Metzenbaum**. Thank you very much. That is very kind of you to say that.

Senator **Thurmond**. Thank you, Senators, for coming. We appreciate your taking the time.

Senator **Metzenbaum**. We certainly do.

I think we will take a recess, go over and vote, and then come back for some of the inquiry.

[Recess.]

Senator **Metzenbaum**. The committee will come to order.

Mr. Lifland, would you be good enough to come back to the table?

Mr. Lifland, I understand that several weeks ago you expressed concerns that our committee might stop holding hearings on judicial nominations at the beginning of April. Obviously, your presence here today would correct that impression, but I wanted to ask you, how did you get that impression?

Mr. **Lifland**. Senator, that concern was expressed to me by people at the Justice Department and they brought that to my attention as obviously a matter of interest to me. I brought it to the attention of the chief judge of our district court in New Jersey, and I gather that from there it took on some growth of its own, but it did come from the Justice Department, Mr. Chairman.

Senator **Metzenbaum**. It came from the Justice Department?

Mr. **Lifland**. Yes, it did.

Senator **Metzenbaum**. Mr. Lifland, I did not swear you. Would you be good enough to rise, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Lifland**. I do.

Senator **Metzenbaum**. And is it the fact that your answer to the previous question is incorporated within your oath?

TESTIMONY OF JOHN C. LIFLAND, SUMMIT, NJ, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY

Mr. **Lifland**. Yes, it is, Mr. Chairman.

Senator **Metzenbaum**. I thank you.

I failed to give you the opportunity to do that which we always enjoy particularly in these confirmation hearings, and that is to ask you to introduce your family.

Mr. **Lifland**. Thank you, Mr. Chairman. I would be delighted. My wife, Jean, and my daughters, Emily, Elizabeth, and Laura; my father, Charles Lifland; my brother, Bill Lifland, and his wife, Nancy; and my good friends, Bill Faison, Reynold and Audrey Byrne, and Carroll and Jonna Mackin.

Senator **Metzenbaum**. Would the three daughters be good enough to stand up again, please? [Laughter.]

I always like to ask the members of the family, particularly those who are concerned, because I know the problem that I have with my own daughters.

Do you all think your father should be confirmed for this position?

Ms. **Emily Lifland**. Yes.

Ms. **Elizabeth Lifland**. Yes.

Ms. **Laura Lifland**. Yes.

Senator **Metzenbaum**. Okay, that is a pretty good vote. [Laughter.]

Mr. **Lifland**. That is the second most important vote, Mr. Chairman.

Senator **Metzenbaum**. Right.

Mr. Lifland, you were not told by anyone who works for this committee that there would be a stop or hold on the conduct of hearings at the beginning of April, were you?

Mr. **Lifland**. No, I was not, Mr. Chairman. And, in fact, Mr. Metalitz was gracious enough to call me and tell me that quite the contrary was the fact, which I appreciated.

Senator **Metzenbaum**. I am glad to hear that because, as you can see, this committee is still very much in the hearing business, and let me, on that score, put in the record our statistics with respect to the process of judicial nominations and how we have been proceeding forward. Without objection, that will be included in the record.

[The statistics follow:]

STATISTICS ON JUDICIAL NOMINATIONS PROCESSING

(Reflects activity through 4/28/88)

As of this afternoon, the committee will have held hearings on 80 of 97 judicial nominations received in this-Congress, or 82%.

As of today, the committee has acted on 71 of 97 judicial nominations received, or 73%. Three nominations were withdrawn before the committee could act. If these nominations are excluded, the committee has acted on 75% of all judicial nominations.

17 nominations have not yet been the subject of hearings. Of these, 11 were received after December 18, 1987 (i.e., after the very end of the First Session).

Since the Second Session of Congress convened, the committee has held hearings on 25 judicial nominees, and 18 of these nominations have been ordered reported. In the same time period, the President has made only 15 nominations.

100th CONGRESS
NOMINATIONS STATISTICS

(Reflects activity through 4/28/88)

COURT	RECEIVED	HEARING	COMMITTEE ACTION	SENATE ACTION
SUPREME	2	2	2	2
CIRCUIT	21	18	16	13
DISTRICT	68	56	49	47
CLAIMS	6	4	4	4
TOTALS	**97**	**80**	**71**	**66**

One Circuit Court nomination withdrawn after hearing.

One District Court nomination awaiting formal withdrawal by the President.

One Claims Court nomination returned without hearing to President under Senate rule XXXI, and not resubmitted (tantamount to withdrawal).

Senator **Metzenbaum**. Mr. Lifland, we are always concerned with the public service of nominees. It is my understanding that several years ago you received an award for your work on Project Pass, a bar association project designed to assist minority law school graduates to pass the New Jersey bar exam.

Could you tell us a little bit about Project Pass and explain your role?

Mr. **Lifland**. Yes, Mr. Chairman. Project Pass was an organization that was put together by the Garden State Bar Association and our New Jersey law schools. The purpose was to call upon whatever resources were available to assist minority law students who had had trouble passing the New Jersey bar exam.

As a former chairman of the New Jersey Board of Bar Examiners, I was asked if I could help and spend some time with these people to tell them about the analysis of the questions, the approach that the bar examiners were looking for, in some cases the knowledge they were looking to see on the papers and, in general, to ease their concerns about passing.

And these young men and women, and some not so young, and I and the other attorneys who participated in this spent quite a few hours at night and on weekends trying to help and to ease their concerns and to give them encouragement and to give them advice as to how we looked at things when I was a bar examiner, and I am happy to say that we had a good measure of success.

Senator **Metzenbaum**. A good measure of success?

Mr. **Lifland**. Yes, Mr. Chairman.

Senator **Metzenbaum**. Good.

According to your response to the committee's questionnaire, you have served since 1971 as a part-time prosecutor of municipal housing law violations in your home town. Do you have any other criminal law experience?

Mr. **Lifland**. Mr. Chairman, earlier, much earlier in my career I served as a law clerk to U.S. District Court Judge Thomas F. Meaney for 2 years. In the process of that service, Judge Meaney was kind enough to ask me to spend as much time in court as possible and observe both the criminal and civil processes of the court.

While much has changed in the criminal side of the work of the court, much is the same and I think I have retained a good bit of those experiences and approaches. In addition to that, I have good friends now on the court who have offered their assistance to me in any way possible to bring me up to speed on the criminal side.

And, of course, I have been working already with the Federal Judicial Center with the materials that they prepare in order to bring myself up to speed.

Senator **Metzenbaum**. One last question and then I will turn it over to my colleague. As you may have heard, they have just announced another 15-minute roll call vote.

Your responses to the committee questionnaire reveal that you hold stock in a number of large corporations such as AT&T, Exxon, USX, and that you have also represented Exxon and several other large corporations that may at some point appear as parties in cases before you.

What would be your approach to possible conflicts of interest which might arise if you were assigned a case involving one of these companies?

Mr. LIFLAND. Mr. Chairman, in order to avoid even an appearance of impropriety, I would excuse myself from participation in those cases. I think all of the litigants deserve to have complete confidence that any judge is totally impartial and any of his personal interests are irrelevant.

Senator METZENBAUM. We may have some additional questions, but in the interests of time we will submit those to you in writing, Mr. Lifland.

Mr. LIFLAND. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Senator Thurmond.

Senator THURMOND. Thank you. I just have two questions. We are going to have to rush.

Mr. Lifland, again, I congratulate you upon your appointment by the President.

The phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority. What does this phrase, "judicial activism," mean to you?

Mr. LIFLAND. As I understand it, Senator Thurmond, the phrase is used to characterize the actions of a judge which go beyond the realm of dispute resolution between parties who are before the court and represented before the court.

I do believe that a court has limitations because the process is a very narrow and focused process between the litigants in the court and it deals with the evidence that those litigants present to the court. I think other bodies, such as Congress and the executive branch, are better equipped to make the sort of judgments that go beyond the interests of particular litigants before a court.

Senator THURMOND. Under our system, the Congress makes the law, the executive branch headed by the President administers the law, and the Supreme Court and inferior courts interpret the law.

In many cases, judges have taken over school districts, they have taken over hospitals, they have taken over prisons and other things, and I have never understood on what authority they had the right to be doing these things. Their job is to interpret the law.

I realize it has been the bane of humanity all down through the centuries for a man to crave more power, but a judge has enough power without taking on additional duties for which he really does not have authority under the Constitution. That is the reason I asked you that question.

Mr. Lifland, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected either through the text of a provision or its surrounding legislative history?

Mr. LIFLAND. The only source of interpretation of the constitutional or legislative provision, Senator Thurmond, is the words of the provision and, to the extent it is available, evidence of the intent.

I believe that while that intent may sometimes be hard to discern, and indeed while the words may create problems of interpretation, those are the only proper sources of the interpretation.

Senator **Thurmond**. Those are the only questions I have for you. I hope you have a happy service on the bench.

Mr. **Lifland**. Thank you very much, Senator.

Senator **Thurmond**. I will be glad to support you.

Mr. **Lifland**. Thank you.

Senator **Thurmond**. We will have to take another recess now. There is another vote.

[Recess.]

Senator **Metzenbaum**. Mr. David Ezra. Mr. Ezra, do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Ezra**. I do, sir.

Senator **Metzenbaum**. Okay. Let us start off with the tough question, Mr. Ezra. Why did you leave Columbus and go to Hawaii? [Laughter.]

You left my State. I am very hurt.

TESTIMONY OF DAVID A. EZRA, HONOLULU, HI, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

Mr. **Ezra**. Well, I was very fortunate today, Mr. Chairman. I had my——

Senator **Metzenbaum**. You really do not have to answer that question.

Mr. **Ezra**. I had my two Senators from Hawaii, distinguished Senators from Hawaii, Senators Inouye and Matsunaga, supporting me, and I have a fellow Buckeye chairing this hearing.

Senator **Metzenbaum**. Would you like to introduce your family, Mr. Ezra?

Mr. **Ezra**. Thank you, Mr. Chairman. I have here today my wife, Judith, and although they couldn't be here because of the distance and their ages, my three daughters, Amanda, Cheryl and Lisa, at home.

Senator **Metzenbaum**. The daughters are doing well. That is six to nothing at the moment. [Laughter.]

And the Chair has four, so that makes ten to zero. We are doing almost as well as the Baltimore Orioles. [Laughter.]

Mr. Ezra, a number of years ago you represented a business called Center Art Galleries. Center Art is currently under investigation for fraud in its sales of lithographs by the artist Salvador Dali. The alleged fraud dates back to the late 1970s and early 1980s when you represented the company. I want to ask you a few questions about your representation.

Mr. **Ezra**. Yes, sir.

Senator **Metzenbaum**. But please understand I do not intend in any way to infringe upon the attorney-client privilege, nor do I want the fact that you represented a client that is under investigation in any way to be a reflection upon your own ability or character.

Mr. **Ezra**. Thank you, Mr. Chairman.

Senator **Metzenbaum**. When you represented Center Art, were you aware of fraud claims that were being made against the company?

Mr. **Ezra**. Mr. Chairman, there were allegations that were being made by various individuals and during my representation of them I worked in conjunction with the consumer protector's office of the State of Hawaii as well as outside counsel, as one of several outside counsel for this particular client.

And my representation was in large measure in conjunction with working with the consumer protector's office and outside counsel in resolving some of these individual complaints.

Senator **Metzenbaum**. And were you involved in a specific number of individual claims?

Mr. **Ezra**. Senator, as I sit here today, I cannot remember the number, but there were a number of individual complaints. For instance, with regard to complaints made to the consumer protector's office, the process would be that the consumer protector's office, which at that time was a division of—I believe it was either a division or it was under the umbrella of the attorney general's office—would refer to the matters to us. We would refer it on to the client. The client would respond back to us or sometimes directly to the consumer protector's office and the matters would be generally resolved. My role was solely as outside counsel.

Senator **Metzenbaum**. Is it the fact that you were involved in the settlement?

Mr. **Ezra**. Well, there were several settlements, Mr. Chairman.

Senator **Metzenbaum**. Were you involved in any in which Center Art required those with whom the settlement had been made, the settlement of a fraud claim, not to talk to anyone, including law enforcement officials, about their dealings with Center Art?

Mr. **Ezra**. No, sir. I don't remember any—let me answer that question in two ways. First of all, in settling the cases, there were negotiated settlements with outside counsel and with the consumer protector's office where there were—and these were civil cases; they weren't criminal cases—where there were what one might commonly refer to as confidentiality clauses in those settlements.

A form of settlement which contained the confidentiality clause was negotiated with the attorney general's office and approved by them for use. So most of the people, Mr. Chairman, that I dealt with had already been to and were dealing with the authorities.

There was never any intention by me or I don't believe any other attorney that represented them, to keep anyone from going to any law enforcement agency.

Senator **Metzenbaum**. One of the questions that I have—the claims were being made by art galleries or were they being made by individuals?

Mr. **Ezra**. Well, there was a—there were claims by individuals, but there were also litigations between art galleries that sold the same general kind of art. One of the attorneys, for instance, that filed a lawsuit against the gallery as local counsel also represented a competing gallery which was selling much the same kind of material.

Senator **Metzenbaum**. It's my understanding that a settlement was made with another gallery that had bought the prints from

Center. This gallery sold them to people. I gather that was pretty much admitted at some point that they were not actual, original Dalis?

Mr. **Ezra**. Mr. Chairman, first of all, I don't remember any settlements with galleries regarding that issue, but there may have been. I just don't recollect them as I am today, but I never recollect ever the client that I represented, nor do the other attorneys who were representing them in concert with me recollect from my conversations with them, that there was ever any admission even to this day that there was any fraudulent art being sold.

Senator **Metzenbaum**. Were you involved in the release? You may not remember this. How long ago was this?

Mr. **Ezra**. Well, these were quite some time ago, Mr. Chairman. Some go back a decade, but I think that is the release you already asked me about with the confidentiality clause.

Senator **Metzenbaum**. Is this the release you gave us?

Mr. **Ezra**. Yes, Mr. Chairman. That is the one that was approved by the consumer protector's office. They have reorganized, I believe. They were under the umbrella of the attorney general at that time.

Senator **Metzenbaum**. Without objection, we will put the release in the record.

[The document follows:]

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That for good and valuable consideration received from , the receipt and sufficiency whereof is hereby acknowledged, does release, remise and forever discharge and any and all officers, employees, directors, agents, attorneys and assigns of from and on account of any and all claims, actions, causes of action, lawsuits, liabilities and/or damages of whatever name or nature, whether known or unknown, anticipated or not, in any manner arising out of or connected with sold by

IT IS UNDERSTOOD AND AGREED by all of the undersigned parties that any liability on behalf of in connection with the aforesaid or its purchase is denied by all parties and that this Release is to compromise, terminate and bar all disputes and claims for damage, loss or expense of whatever nature, known or unknown in any way, arising or growing out of or connected with the aforesaid purchases and is not an admission of any fraud, misrepresentation or liability of any party named herein.

All parties admit that no representation of fact or opinion has been made by any other party to induce this compromise and that this compromise is made by said parties with full knowledge of the facts and possibilities and that the aforesaid consideration is given solely by way of compromise of the disputed claim. The parties understand that, in accepting the foregoing consideration and executing this Release, it is specifically agreed that this Release shall be a complete bar to any and all claims by for loss or damage of whatever nature arising from or connected with the aforesaid purchase of

That for himself, his heirs, assigns and attorneys, agrees not to divulge, discuss or disclose the facts surrounding the dealings between the parties or the contents of this Release.

The parties hereto agree that the law of the State of Hawaii shall apply with respect to any dispute arising out of the execution of this agreement.

IN WITNESS WHEREOF,

and have executed this Release this ___ day of ________________, 19___.

____

____

APPROVED AS TO FORM

____

____

Office of
Consumer Protection

Senator **Metzenbaum**. Can you think of any situation in which your former or present law firm would be involved where you would not see a need to recuse yourself?

Mr. **Ezra**. No, sir.

Senator **Metzenbaum**. You think that any matter in which they are involved it would be appropriate for you to recuse yourself?

Mr. **Ezra**. Yes, sir, I believe so. Mr. Chairman, I think that it is important not just that an actual conflict exist, but I think that the code speaks in terms of an appearance of conflict, and I think as long as there would be my former law firm involved in any capacity, there might be an appearance of conflict and I think one should recuse themselves in that circumstance.

Senator **Metzenbaum**. Senator Thurmond will submit some questions to you in writing and we may have some additional ones, as well as other members of the committee.

[Response to questions follow:]

ANSWERS TO QUESTIONS FROM SENATOR STROM THURMOND FOR DAVID A. EZRA, OF HAWAII, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

1. MR. EZRA, WHAT ARE THE STANDARDS THAT YOU WOULD USE IN DECIDING THAT YOUR COURT HAD A CONTINUING ADMINISTRATIVE RESPONSIBILITY TO OVERSEE THE IMPLEMENTATION OF ONE OF ITS ORDERS?

ANSWER: THE STANDARDS WOULD BE EXTREMELY HIGH. DAY TO DAY OVERSIGHT BY THE COURTS IN AN ADMINISTRATIVE CAPACITY SHOULD COME IN ONLY THE MOST UNUSUAL CIRCUMSTANCES. THE COURTS ARE GENERALLY NOT BEST EQUIPPED TO ADEQUATELY OVERSEE SUCH ADMINISTRATION.

2. MR. EZRA, HOW WOULD YOU RESOLVE A CONFLICT BETWEEN YOUR OWN CONSCIENCE OR YOUR OWN SENSE OF JUSTICE AND THE CLEAR MEANING OF A STATUTORY OR CONSTITUTIONAL PROVISION?

ANSWER: IN SUCH CIRCUMSTANCES THE CONFLICT SHOULD BE RESOLVED IN FAVOR OF THE CLEAR MEANING OF THE STATUTORY OR CONSTITUTIONAL PROVISION.

DAVID A. EZRA

LAW OFFICES
EZRA, O'CONNOR, MOON & TAM
A LAW CORPORATION
TWENTIETH FLOOR CENTRAL PACIFIC PLAZA
220 SOUTH KING STREET
HONOLULU, HAWAII 96813
TELEPHONE 808 545-3030

HILO, HAWAII OFFICE
SUITE 228 A, HILO LAGOON CENTRE
101 AUPUNI STREET
HILO, HAWAII 96720

SAN FRANCISCO OFFICE
235 MONTGOMERY STREET
RUSS BUILDING, SUITE 835
SAN FRANCISCO, CALIFORNIA 94104

FEDERATED STATES OF MICRONESIA
POST OFFICE BOX 1491
POHNPEI, CAROLINE ISLANDS 96941

FACSIMILE:
808 523-8051
CABLE ADDRESS:
EOMLAW

May 3, 1988

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Attention: Andrew Rainer, Esq.

Re: David A. Ezra; Nomination for Appointment, U.S. District Judge for the District of Hawaii

Dear Mr. Chairman:

I am pleased to enclose my responses to the ten (10) additional questions posed by your Committee after my confirmation hearing held on Thursday, April 28, 1988.

Should your Committee require any additional information, explanation or elaboration on any of the answers I have provided, I will of course will be happy to furnish such additional information on request.

Very truly yours,

DAVID A. EZRA

DAE:gg
Enclosure

cc: The Honorable Strom Thurmond,
United States Senate

ADDITIONAL QUESTIONS FOR DAVID EZRA

1. You were one of a number of attorneys who represented Center Art Galleries in resolving several fraud claims made against it during the late 1970's and early 1980's. About how many such claims were you personally involved with?

> As I indicated at my recent hearing before the Committee, I have no independent recollection of the number of fraud claims made in cases during this period of time. However, since returning from Washington, D.C., I have made a genuine effort with the assistance of another individual from my law firm to provide the Committee with a more accurate estimate of the cases I was personally involved with.
>
> Our effort to provide a reasonably accurate estimate has been severely hampered by the substantial number of years that have elapsed. In addition, several referrals to our office did not involve fraud claims, but indicated typical retail/ commercial complaints such as late delivery, etc. Some disputes of which we may have been notified were resolved directly between the parties with no substantial involvement by our office.
>
> After checking docket records at both the State Circuit and Federal Court, we have generally estimated that I was involved to a varying degree (frequently with other counsel) in between 15 and 20 cases filed with the indicated Hawaii Courts which may have included fraud claims in addition to continuing work from time to time on matters with the Consumer Protector's office, and occasionally with private counsel as I have previously indicated to the Committee.

2. Were you aware that, beginning in about 1979, the Hawaii Attorney General's office investigated Center Art for fraud in its sales of artwork?

> I knew there was an investigation relating to Center Art which I believe at that time primarily involved marketing issues. It is my recollection that the matter was being handled primarily by the Consumer Protector's office and that the parties were in the process of negotiating a resolution of the issues between them.

3. According to an article that appeared in the Honolulu Star Bulletin, the Attorney General's office, as a result of its investigation, prepared to file a complaint against Center Art. But, at the last minute, the complaint was pulled from

the desk of a judge and was never ultimately filed. Are you familiar with the circumstances surrounding this incident?

I do recall some of the circumstances surrounding this incident. My first hand recollection of this incident is set forth below.

4. According to one account of this incident, you learned that the Attorney General's complaint was about to be filed, and you brought that to the attention of other attorneys who were representing Center Art. What happened after that?

A private attorney told me that he heard that a civil Complaint was pending by the State against the Gallery. My recollection is that I tried to confirm this with a junior deputy attorney at the Attorney General's office (main Attorney General's office, not the Consumer Protector or Anti-Trust division), and I recollect that he was unaware of the filing or intended filing of a civil complaint. I may also have spoken again with the private attorney who first brought the situation to my attention. I did not speak with the Attorney General about the matter and had no other direct involvement. Anything else I have heard comes from second hand accounts and newspaper articles.

5. Setting aside the Attorney General's complaint, about how many fraud claims against Center Art were you involved in settling?

Most of the matters I was involved in, including matters where I represented the client in conjunction with other counsel, were resolved at some point by way of a settlement between the parties. As indicated in my response to Question No. 1, I generally estimate that I was involved to one degree or another in between 15 and 20 matters filed in State Circuit Court and Federal Court in addition to my work with the Consumer Protector's office and private counsel from time to time.

6. According to another article in the Honolulu Star Bulletin, Center Art had a practice of requiring customers whose fraud claims it settled not to talk to anyone about their dealings with Center Art. You have provided the Committee with a form of release that was used in a number of settlements you negotiated for Center Art with the Hawaii Consumer Protector's office. The release provides that the customer (quote) "agrees not to divulge, discuss or disclose the facts surrounding the dealings between the parties or the contents of this Release."

This provision appears to do two things: 1) it requires the customer not to discuss with anyone the terms of the settlement being entered into, and 2) it requires the customer not to discuss with anyone any of the original dealings between the parties that caused the dispute in the first place. In your experience, isn't it more common for a normal civil settlement to require only the first of these two things-- that is, to require the customer not to discuss the terms of the settlement being entered into?

> As with all provisions in negotiated settlement documents, there is substantial variation in the wording of confidentiality clauses. Therefore, I do not know if there is a "standard" or "normal" clause as such. However, clauses similar in wording to the one contained in the quoted release are frequently used in civil commercial cases. The purpose of the clause is to inhibit one settling party who has voluntarily entered into a compromise agreement to resolve a dispute from continuing to publicly or privately repeat unproven allegations, then punctuate the story with the fact of settlement (if not the terms), as evidence to the listener of the admission of liability or the truth of the allegations.
>
> Apparently the state Consumer Protector's office did not feel the clause was unusual or inappropriate since they approved it for use in their settlements.

7. When you negotiated this settlement language with the Consumer Protector's office, or indeed any of the settlements you handled for Center Art, was there ever any discussion about what constraints it might impose on customers' reporting complaints about Center Art to criminal law enforcement officials?

> I do not remember discussing with the Consumer Protector's office or with private attorneys (or for that matter, with the client or co-counsel) releases imposing constraints on the filing of criminal complaints.
>
> As I have previously indicated, it is my recollection that the vast majority of parties we dealt with had already filed some form of complaint, or had spoken with and been counseled by the authorities or their own private attorneys. Our dealings with these parties were in a civil context.
>
> As an aside, the question assumes that I negotiated the settlement language used in the approved release. As I recall, the release form had already been put into use when I began dealing with these matters. However, so many years have passed that it is possible that I was involved in the process. Further, I recollect hearing that several individuals who settled and signed confidentiality clauses

subsequently went to the authorities and filed complaints, apparently feeling they were free to do so.

8. Were you ever involved in drafting even broader confidentiality language for Center Art? Specifically, did you ever prepare a release that required the customer to state, if asked, that he or she was "completely satisfied" with all dealings he or she had with Center Art?

I do not recall ever having drafted a settlement document containing the quoted language. However, because there were many settlements, some of which occurred a decade ago, I cannot today recall the specific language used in every instance. Further, releases were drafted by several different attorneys (including several attorneys in our office and in some cases opposing counsel), and I therefore cannot categorically state that it was never used.

9. In light of the fact that you were representing Center Art in a fair number of fraud settlements, did it ever occur to you that the company might be involved in a broad "pattern" of fraud against its customers? In connection with your representation of Center Art, what did you view as your responsibilities under Disciplinary Rule DR7-102 of the Hawaii Rules of Professional Conduct?

Disciplinary Rule DR7-102(7) requires among other things that a lawyer not assist his or her client in conduct that the lawyer knows to be illegal or fraudulent. Neither I nor any of the several other attorneys representing this client (all of whom I understand to be widely respected and ethical) felt, in light of the evidence we had been provided, that our representation violated this or any other rule of professional conduct.

The client and other individuals we dealt with attributed the substantial number of complaints filed to the widespread adverse publicity surrounding the sale of suspect art by "boiler room" and other such operations on the mainland which made all artwork and art dealers suspect, even those that were legitimate. As attorneys representing this client, we dealt with many claimants who sought refunds based on claims of fraud who were candid in saying they had no specific evidence that their purchases were fraudulent, but they had read or been told that all Dali art sold in retail art galleries was suspect.

In representing this client, we as attorneys were provided documents, put into contact with individuals who represented the artists (attorneys or business managers), and in some cases had contact with artists themselves. In addition, we also dealt with art experts in several instances.

As with all civil litigations (over 90% of which settle at some point prior to trial in Hawaii), there were many reasons why these matters settled having nothing to do with an admission of liability or wrongdoing. Not the least of these was the cost and expense involved as well as the vagaries of the litigation process. Further, the State strongly encouraged early resolution of matters and the client was attempting to cooperate with the State.

Some of the complaints did not involve fraud claims and many of the complaints were based on unauthorized statements of overzealous sales personnel (usually as to anticipated increases in value) which the client advised us and the Consumer Protector's office they did not condone and took affirmative steps to stop.

Given all of these circumstances, as attorneys, we felt that our representation of this client was professionally responsible.

10. In one of the fraud cases you worked on, you attended a deposition of Nora Johnson, a former employee of Center Art, at which she raised several allegations of fraud by Center Art officials. What steps did you take to investigate her allegations after the deposition?

It has been nine years since Ms. Johnson's deposition, and I have only a general recollection of this matter. I do, however, recall that in connection with ongoing case development and preparation we did a factual investigation which included the allegations made by Ms. Johnson in her deposition.

As I recall Ms. Johnson had a close personal relationship with the Plaintiff in the action in which she testified and had a substantial separate dispute, which culminated in litigation which she instituted against our client. Nevertheless, the lead counsel and I interviewed many other Gallery employees regarding her allegations. We did this for the most part without Gallery management being present to insure that the employees would be forthcoming. We also carefully reviewed all other available materials and documents.

CENTER ART GALLERIES PROBE WAS HALTED 6 YEARS AGO

(BY LEE CATTERALL)

Former state attorneys are shedding no light on the reasons for ending an investigation of Center Art Galleries-Hawaii after preparing a formal complaint six years ago.

That investigation—and its conclusion—gained new importance yesterday after city and federal authorities raided Center Art Galleries, seizing allegedly fake Salvador Dali artworks.

Then-Attorney General Wayne Minami said he has no recollection of the two-year probe conducted by Robert Miller, then head of the attorney general's antitrust division.

"I remember Bob working on it but I don't recall exactly what happened to it," Minami said.

Miller confirmed in November that he prepared a formal fraud complaint against Center, placed it on the desk of then-Circuit Judge Arthur Fong but then was directed to withdraw it.

Miller did not say why the complaint was withdrawn or who asked that it be withdrawn. He declined to elaborate yesterday, claiming attorney-client confidentially. He said his client at the time was the attorney general.

Fong said he does not remember seeing the complaint on his desk.

Circuit Judge Robert Klein in November refused to require the attorney general's office to disclose its file of the investigation to the Star-Bulletin. Attorney General Warren Price has refused to disclose it since then, citing Klein's ruling.

A few documents from the file that were disclosed to the Star-Bulletin indicate Miller's investigation included fraud allegations made by Roland Vasquez, a California avocado grower who spent nearly $1 million at Center.

Former Center employee Nora Junk Johnson said she was questioned in connection with the investigation about allegations of forgery and mispresentation by Center.

Assistant U.S. Attorney Les Osborne said about 40 Honolulu police, U.S. postal inspectors and city prosecutor's investigators conducted yesterday's full-day raid on Center's four Honolulu galleries and warehouse. The raid did not include the gallery's three Maui outlets.

Company records and art-works seized in the raid will be reviewed before determining whether evidence will be presented before state and federal grand juries, authorities said.

Law enforcement agencies elsewhere in the country have attempted recently to stem the proliferation of what has been termed Dali "product"—reproductions of Dali's paintings and sculptures that are sold as original works.

In February 1986, a New York grand jury indicted seven people from two galleries on larceny charges in connection with their boiler-room art sales. Two of the principal figures were convicted two months ago of securities fraud for selling $10 posters of Dali paintings for $3,000 apiece as original Dali lithographs.

Two California dealers agreed in September to judgments restricting their marketing of art in New York because of past Dali works they had sold.

In March 1986, authorities in Albuquerque, N.M., raided a Shelby Fine Arts gallery—part of a 35-gallery, nationwide chain—and confiscated artworks and company records.

DALI LITHOGRAPH ISSUE CAN BE TRICKY

Is that Dali lithograph fake or real?

The answer to that question may be tricky, as Salvador Dali lithographs are believed to have mushroomed into the hundreds of thousands nationally.

A. Reynolds Morse, director of the Dali Museum in St. Petersburg, Fla., says his research has found only 23 lithographic prints—of four images—that were "made by the hand of Salvador Dali."

However, Morse adds that Dali created at least 27 paintings intended for commercial publication "using various reproductive processes" from 1962–63 and from 1976–77. Dali signed prints made from those editions, which "were sold out contemporaneously" and "seldom appear on the market for resale," according to Morse.

Dali, 83, is reported to have signed thousands of blank sheets of paper. He swore in a 1985 affidavit "that all the handwritten signatures 'Dali' that appear in the reproductions or prints for sale to the public cannot be attributed to me without exception."

Dali added in the affidavit that he "stopped signing blank sheets intended for printing, or otherwise," after 1980.

Experts examine watermarks on paper as one method to determine if prints bearing Dali's signature were produced after that year. They also look for dot patterns to determine if the prints are photomechanical reproductions.

Authorities have compiled records of Dali contracts for reproductive rights to his artworks.

POSTAL PROBE LINKS ISLE, NEW YORK ART CASES

(By Lee Catterall)

Center Art Galleries-Hawaii has business connections with the same publishers of fake Salvador Dali lithographs at issue in recent New York fraud convictions and in similar "bogus" Dali cases under investigation, according to a U.S. postal inspector.

A New Jersey art publisher whom Center has defended in the past as a person of integrity is among the allegedly fake Dali publishers, according to Robert DeMuro, a New Jersey-based postal inspector.

"Leon Amiel, of Amiel Publishing, Secaucus, N.J., and Paris, France, believed to be one of the largest producers of purported forged and fake Dali artwork, is a direct supplier of Dali prints to CAG," according to DeMuro.

Amiel was identified by the Star-Bulletin in 1985 as the publisher of a Marc Chagall lithograph, titled "Ceiling of the Paris Opera," sold by Center that Chagall's widow described as a "fake." Center defended Amiel against the accusation and has continued to sell the print.

DeMuro was involved in an investigation that led to convictions in 1986 of owners of two New York City galleries that sold poster-type prints worth $10-20 for as much as $3,000 apiece.

DeMuro's statement is included in an affidavit prepared by Postal Inspector Richard Portmann of Honolulu as the basis for last April's raid of Center's Oahu outlets and subpoenas on its Maui galleries.

A federal grand jury has been meeting since June to consider bringing charges of mail and wire fraud against officials of the multimillion-dollar company.

The affidavit has been under court seal since it was prepared two days before the raid, in which authorities seized purported Dali artwork and company records. The affidavit was made public this week, disclosing the government's evidence up to then about Center's marketing practices.

According to Portmann's affidavit, a postal inspector and Honolulu police detective operating undercover were given fraudulent sales pitches when urged to buy Salvador Dali prints last year at three Center outlets.

Portmann says sales people misrepresented the prints to the undercover officers as lithographs that had been supervised and signed by the elderly Spanish artist.

It says misrepresentations by the gallery have been "basically the same" for more than a decade, including a period from 1979-81 when the state attorney general's office investigated Center but took no action.

The sales pitches given to the officials—unnamed in the affidavit—conflict with written "certificates of authenticity" issued by the gallery that state it is "unknown" whether Dali approved the prints, even though he signed them. A state law enacted in 1986 requires disclosure of the artist's approval or lack of approval.

The sales people accused of misrepresenting the prints are identified as Ala Moana Center gallery manager Randall Galloway, Royal Hawaiian Shopping Center gallery manager Mary Pat Larsen, Waikiki Shopping Plaza gallery manager Sylvia Gomes and salesman Allen Sheppard.

(Center has since closed its operations at Ala Moana and Waikiki Shopping Plaza.)

"The sales presentations with respect to Dali art include material misrepresentations and/or omissions of fact," Portmann says in the affidavit. Literature in mailings to potential customers "also contains misrepresentations and omits material facts about the creation of and provenance (origin) of these allegedly limited edition Dali prints and it is also misleading about their value," the affidavit says.

Center has given refunds to "many" customers who "learned that the art piece was not an original and that Dali had no involvement with the creation of it, nor signed it after it was created," Portmann says.

"However," he adds, "as part of the settlement the customer has been required to sign an agreement to keep the information confidential and to bar him from initiating prosecutive action."

The purchases made by alleged victims named in the affidavit have been described in Star-Bulletin articles since early 1986. They are Honolulu fashions consultant Leilani Petranek-Trillo, Richard S. Battin, Marilyn McInnis, Air Force Lt. Col. Pat Reese, all of Honolulu, and Australian Richard Thackwray, who testified before the grand jury in its opening session.

Two of the alleged victims are not named. The purchases match those made by Joryn Jenkins, a former assistant attorney general in Florida who prosecuted organized-crime fraud.

Portmann says DeMuro determined that Center owner William Mett was "put on notice" after a November 1984 advertisement mailing that two purported Dali lithographs "were Dali fakes and should not be attributed as original reproductions of Salvador Dali."

At that time, Mett owned "The Battle of Tetuan," an original Dali oil painting, and "had intentions of purchasing 'pre-signed' paper to use for reproduction of this painting," according to DeMuro. Since then, Center has sold the "Tetuan" print as having been signed by Dali.

In 1983, Portmann says, Center sold a three-lithograph "Vatican Museum Collection" by Dali bearing the Vatican's seal. The gallery "advertised that each collection would be accompanied by a special museum certificate bearing the Vatican's seal and the name of the owner of the collection along with a permanent registration number recorded in the archives of the Vatican Museum."

The Vatican Museum's secretary and treasurer in July wrote in a letter to an expert being used by the government, saying, "We do not have in our possession the works you mentioned. Furthermore, we never allow any concern to make statements as to our certifying reproductions."

LAW OFFICES
EZRA, O'CONNOR, MOON & TAM
A LAW CORPORATION

HILO, HAWAII OFFICE
SUITE 228 A, HILO LAGOON CENTRE
101 AUPUNI STREET
HILO, HAWAII 96720

SAN FRANCISCO OFFICE
235 MONTGOMERY STREET
RUSS BUILDING, SUITE 835
SAN FRANCISCO, CALIFORNIA 94104

TWENTIETH FLOOR, CENTRAL PACIFIC PLAZA
220 SOUTH KING STREET
HONOLULU, HAWAII 96813
TELEPHONE 808 545-3030

FEDERATED STATES OF MICRONESIA
POST OFFICE BOX 1491
POHNPEI, CAROLINE ISLANDS 96941

FACSIMILE:
808 523-8051
CABLE ADDRESS:
EOMLAW

May 10, 1988

Andrew Rainer, Esq.
Counsel, U.S. Senate Judiciary Committee
Room 224, Dirksen Building
Washington, D.C. 20510

Dear Mr. Rainer:

It was a pleasure to speak with you again regarding this matter and I would like to take this opportunity to confirm and respond to the substance of our conversation.

In order to further supplement the record in this matter, you have requested that I provide to the Committee some additional clarification or information relating to my previous written responses. In making this request, you specifically advised me that judicial nominees are commonly requested to provide such additional information or clarification in the normal course of the Committee's review process, and that this request does not constitute a negative inference upon my previous responses, but is rather simply an effort to more completely develop certain areas of inquiry.

In that vein, I am of course happy to cooperate with the Committee in any way possible and have provided the Committee with such additional information as I can recollect given the number of years which have elapsed, and which would not place me in violation of the Supreme Court of Hawaii's Rules of Professional Conduct regarding the attorney/client privilege or other rules.

During our telephone conversation we specifically discussed my responses to Questions Nos. 4, 7, 9 and 10. To avoid unintended confusion, I will address each question separately.

Question No. 4. During my recent trip to Washington, D.C., we had an opportunity to meet and discuss, among other topics, the subject of Question No. 4. At that time, I advised you of the sum total of my independent recollection of events surrounding the incident referred to. Among other things, I

Andrew Rainer, Esq.
May 10, 1988
Page -2-

told you that I had been advised by a private attorney that a civil complaint was pending by the State against the gallery. As indicated in my previous answer to Question No. 4, I attempted to confirm that with a junior deputy attorney general who, to the best of my recollection, was not aware prior to my speaking with him of the existence of such a complaint. I also advised you in Washington that I had discussed this matter with one or more attorneys at my law firm. I did not reiterate the fact of this discussion with other attorneys in the body of my answer, since it had been assumed as fact and was an integral part of the body of Question No. 4.

In addition, although not specifically raised in your question, you have requested that I comment upon an unsubstantiated news story which has implied that some political influence may have been brought to bear upon the former Attorney General by a senior partner at my former law office to affect the filing of the complaint in question. As I have advised you, I have no personal knowledge of and I do not believe any such political pressure was exerted by the former senior partner in question and it is my understanding that the former Attorney General has categorically denied that anyone (including my former senior partner) ever attempted to exert political pressure on him regarding this complaint or its filing. This is the sum total of my independent recollection of my involvement.

As I have previously indicated, I did not speak with the then Attorney General regarding this matter in any connection.

Question No. 7. We discussed my response to Question No. 7 wherein I related that I do not remember discussing with the Consumer Protector's office releases imposing constraints on the filing of criminal complaints. I believed I was responding to the question fully when I further stated in my response that it is my recollection that the vast majority of parties we had dealt with had already filed some sort of complaint or "had spoken with and been counseled by the authorities". I equated the term "counseled by" or "discussed" as being synonymous with "report". However, so that there will be no misunderstanding, our representation of these clients was in a purely civil context in these matters and as my co-counsel has confirmed to me recently, we simply did not discuss or think in terms of the settlements we were entering into being a constraint upon anyone seeking assistance from the authorities, since as I have previously indicated on several occasions, the authorities were well aware of the existence of these issues and complainants and the vast majority had already spoken with those authorities.

I also have since heard that several individuals who settled and signed confidentiality clauses did subsequently go to the authorities and file complaints indicating that they felt free to do so.

Question No. 9. In our discussion of Question No. 9, I advised you that it was my intention in responding to Question No. 9 to give as complete and accurate an answer as possible given the constraints of the Code of Professional Responsibility and the number of years which have elapsed since the happening of many of these events. In any case where a client I represent has been alleged to have engaged in fraudulent conduct, I have made an effort to investigate those allegations and did so in this case (usually in concert with other counsel) as previously indicated in my earlier responses.

As I indicated in my answer, we as attorneys were advised that the client believed the artwork being sold was legitimate. We obtained that information not solely from gallery management, but also from other sources, including as I have previously indicated, dealers, artists' representatives, artists themselves, in some cases, the artists' attorneys, and in some instances art experts.

We of course were aware that a number of complaints had been lodged against the gallery, but were advised by our client and by other individuals not employed by the client that much of the controversy surrounding artwork being sold by our client was generated as a result of adverse publicity and the widespread sale of less than genuine art by other sources, which publicity was causing an adverse reaction to the art being sold by our client as well as by several other galleries in Honolulu which also at the time marketed the same type of artwork.

As the newspapers have reported, this situation is a complex one and there remains a substantial debate aired in the national media between highly regarded art experts as to what, among other things, constitutes an original lithograph. Naturally, attorneys representing this client, or for that matter attorneys representing any art gallery or art museum, are not in a position to make an independent expert judgment as to the authenticity of the artwork being exhibited or sold. That attorney must rely upon such information as is available, including as I have indicated, copies of contracts and contact with those who had been represented to have direct involvement with the artist or those that we were advised held the legal right to reproduce the work. There are major museums in this country and elsewhere that have for years exhibited as authentic, artwork which later turned out to be less than authentic.

In addition, there were instances where other art was called into question. As one example, I recall an allegation that our client was selling unauthorized art allegedly falsely attributed to Mr. Red Skelton. In this case, we personally met with Mr. Skelton who assured us that the work our client was marketing was genuine, authorized and authentic in every way. I also recall there was an allegation that a very large piece which I believe was titled "Battle of Tetuan" or some similar name, was alleged to be a forgery or less than authentic and not the work of the artist Dali. Recently, this work was sold by one of the major auction houses (Sotheby's or Christie's) for I believe in excess of $2,000,000.00.

Further, as I attempted to indicate in my answer, many of the complaints which were brought to my attention had really nothing to do with fraud allegations, but as Mr. Nomura I believe pointed out in an article in the Honolulu Star-Bulletin, raised issues such as late delivery. There were of course other issues raised in a commercial context, such as concerns about whether the piece which was delivered bore the same number as the piece promised, etc., and these matters were usually resolved rather quickly.

Question No. 10. Finally, with respect to Question No. 10, as I indicated to you, I am constrained by the Canons of Professional Responsibility from revealing the substance of the conversations with my client's employees held between myself and lead counsel during the interviews indicated. I might further add, that quite frankly I do not recollect much of the substance of those conversations in any event, because they took place almost ten years ago. However, I can say that following those interviews all of the attorneys involved felt that in light of all of the circumstances including those interviews our continued representation of this client did not violate any Canon of Professional Responsibility and was proper and ethical. Further, in my earlier response to Question No. 10, my reference to the close personal relationship between Ms. Johnson and the plaintiff was not intended to indicate other than a close personal friendship. It was mentioned only because such friendships among parties and witnesses are commonly taken into consideration when evaluating the testimony being given by a particular witness. However, in spite of this personal friendship between this witness and the plaintiff, we conducted an independent investigation of her allegations, as previously indicated.

I trust this correctly memorializes our telephone conversation regarding this subject and is of benefit to the Committee in their further review of this matter. I also want to express to you my appreciation for the effort you have put into thoroughly investigating this and other matters relating to my nomination, and for your assurance the request for the supplementary responses is a normal process in the review of these nominations.

Very truly yours,

DAVID A. EZRA

DAE:gg

Senator METZENBAUM. We have no further questions for the day.

Mr. EZRA. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you.

Our next witness up for confirmation is Shannon T. Mason. Mr. Mason, the Chair is going to leave the chair promptly if I find that your four children are all daughters. It will strain my credulity. [Laughter.]

Mr. MASON. Mr. Chairman, I have two of my three sons with me, but we have a daughter, also.

Senator METZENBAUM. Okay. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. MASON. I do, sir.

Senator METZENBAUM. And would you be good enough to introduce your family?

TESTIMONY OF SHANNON T. MASON, JR., NEWPORT NEWS, VA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Mr. MASON. Yes, sir. My son, Ben; my son, Mark; our daughter, Page, and her husband, Tom. I regret that my other son, Shannon, cannot be with us. My bride of over three decades is here, Mary Lou.

Senator METZENBAUM. Over three decades? You must be treating her well.

Mr. MASON. I'm glad you said that, Senator.

Also, we are fortunate to have her sister with us, Ms. Weese, and her son, Michael, and I think that—oh, I'm sorry—a cousin, Colonel Tommy Howard, and his son, David.

Senator METZENBAUM. We are happy to have all of you with us.

Mr. Mason, in your 25 years of law practice, you have handled almost exclusively civil cases. The court to which you have been nominated has a sizable docket of criminal cases. Do you feel that that will be a problem for you, and how do you expect to deal with the question of criminal law cases which do require a certain amount of knowledgeability of some of the rules that are more applicable to criminal law than to civil law?

Mr. MASON. Mr. Chairman, there are several points there. Number one, like one of my predecessors, I started as a law clerk at a Federal district court which had a substantial exposure to the criminal law.

For some 12 or 14 years, I sat as a substitute judge on the lower courts in my city of Newport News, and in that, among other cases, I also tried the criminal cases. I have tried to keep myself abreast of the criminal law. I have spoken to some of the judges both in the State courts and in the Federal courts, who I'm sure will be able to assist me in gaining back that which I may have lost.

The Federal judiciary system, as you know, also has educational provisions which I hope to avail myself of. I believe I can do it rather quickly, sir.

Senator METZENBAUM. In the answer to the committee questionnaire, you indicated that you had handled some cases for clients who could not afford to pay legal fees on a, quote, "sporadic and limited basis." Can you give us any more details on that?

Mr. **Mason**. Mr. Chairman, there are two things. Some perhaps 15 or more years ago in Newport News the bar association, in which I was an active participant, provided pro bono work. I personally feel it is a very valuable obligation of the profession.

That pro bono system was replaced by a formal legal aid system. Individually, I have had clients over the years that have come to me. You intend to inherit them. They cannot help themselves. You end up helping them and people of that like, they tend to refer others, cousins, relatives, whatever it is, so that although I have not had an extensive background of working regularly with pro bono cases, I can assure you that I have them come in my office. I try to help them and I provide that service as best I can.

Senator **Metzenbaum**. Let me talk to you about the matter of discriminatory clubs and your membership. You stated that you are a member of two organizations that, to your knowledge, have no black members. I understand you recently resigned from one of these organizations.

Let me ask first about the James River Country Club. When did you join that club?

Mr. **Mason**. Some 17 years ago, I believe, Mr. Chairman.

Senator **Metzenbaum**. And a local newspaper in your community, the Daily Press, reported recently that this club has not had a black member in its 56 years of existence. Is that accurate as far as you know?

Mr. **Mason**. As far as I know, yes, sir. The club is about that age and I am unaware of any black member.

Senator **Metzenbaum**. Pardon?

Mr. **Mason**. The club has an age of approximately 56 years and I am personally unaware of any black membership.

Senator **Metzenbaum**. Do they have any Jewish members?

Mr. **Mason**. I am advised, Mr. Chairman, that there are. The Daily Press—I don't know whether that is the source of my authority, but I believe that there are Jewish members in that club. I have been so told by the manager.

Senator **Metzenbaum**. But you do not know that to be a fact?

Mr. **Mason**. No, sir, I do not.

Senator **Metzenbaum**. And you recently resigned from the James River Country Club after 17 years as an active member. Did you ever raise the issue of minority membership in the club while you were in the club?

Mr. **Mason**. No, sir, I have not. I might say that it has been the light subject of discussion among some of my colleagues, but never on an affirmative basis have I ever gone to the club and sought to have that policy changed.

Senator **Metzenbaum**. I did not get that word, the light subject?

Mr. **Mason**. I have had light discussions with friends in an informal atmosphere in which we had chatted among ourselves that there was a need for a change, but I have never gone officially to any club member or to the board and suggested that.

Senator **Metzenbaum**. When you say it was light conversation, was it done in a jocular manner? I mean, is that what you are suggesting?

Mr. **Mason**. No, Mr. Chairman, not that at all. What I'm saying is that when you have fellow members of the club who you not only see in the club environment but it is a part of your social life to be with them, we would be talking about it.

And the things that you would chat about was the idea that if we would open the club, we would probably have a much broader base. The club would be—I would use the word a better club, and with the more members perhaps it would be less of an economic burden on those of us who were members.

Senator METZENBAUM. When did you resign and why?

Mr. MASON. The date of my resignation, I can't tell you. I would say it was in the past 3 weeks. I would like to tell you why. When it became, in my judgment, recognized that I was a viable candidate for this job which I seek and have sought for a long time, I recognized that the canons of ethics referred to these memberships that in some way might be deemed to be offensive or cause ill-will to others.

Once I recognized that I was a viable candidate, I made a decision to quit the James River Country Club. At the time before I made any announcement, I wanted to talk to Senator Trible about it because, after all, he was my sponsor. Senator Trible was then, I believe, out of the country. He was in Russia, and so I awaited his return. When he returned, on the Monday following his return, I spoke to him, advised him of my decision, and immediately resigned.

Senator METZENBAUM. Mr. Mason, I have some concern, and I am frank to say to you that it is my understanding that you knew as long as 2 years ago that you might be nominated. And you are obviously an intelligent lawyer and you undoubtedly knew of the ABA's Code of Judicial Conduct and the ethical rules of the Judicial Conference which state that judges should not belong to organizations that invidiously discriminate on the basis of race.

Now, really, what bothers me is that being an intelligent person, you only resigned in the hope that you would be confirmed, and you only resigned because you knew of the Bar Association provisions and the Judicial Conference provisions.

I guess really what bothers me is why in the devil did you not resign a long time ago without the pressure of confirmation. I think the question of being a member of a discriminatory club is not just a matter of resigning in order to get confirmed by the U.S. Senate. I think it is a question of what kind of a person the nominee is and does the nominee need that arm-twisting of the ABA and the Judicial Conference in order to arrive at the right decision. Frankly, that is of some concern to this Senator.

Mr. MASON. Mr. Chairman, I am aware of the view which you express. I would like to give you my perception of it. Some 2 years ago, my name was among three that were submitted to the President. At that time, it became apparent that I would not be then sitting where I am now.

I felt then and, Senator, I feel now that my life has been one where I have been fair. I have not been discriminatory. I believe I have been kind to my fellow man. I am not that type person.

I became aware that the mere membership in such a club standing alone could perhaps forfeit what I considered to be 25 years of acquiring a reputation for fairness to my fellow man.

Therefore, rather than have that sole membership issue cloud what I considered to be a pretty good reputation for integrity and fairness, I resigned from the club.

Senator METZENBAUM. I guess that is not my point. My point is—well, I guess I will put it another way. Give me some one indicator that a black person appearing before you would not have some reason to be concerned about your fairness.

As I understand it, you belong to another organization, the Hampton Roads Assembly. I understand that you just resigned this week from that organization. Is that correct?

Mr. MASON. Yes, sir.

Senator METZENBAUM. And how long were you a member of the Hampton Roads Assembly and what does that club do?

Mr. MASON. Mr. Chairman, I have been a member of that, I believe, 5 or 6 years. I would like to explain to you what that club is because, in my judgment, it is not in any way similar to the James River Country Club.

The Hampton Roads Assembly is a group of people who do nothing but sponsor three dances a year. They are held at different places. They do not do anything other than rent a hall and the membership shows up.

I looked upon it as being of such a minor, non-existent, non-ongoing thing because my wife would go—if there were three dances, we might attend two. When Mr. Metalitz called me and asked that question, me having disclosed it on the form, quite frankly it had not occurred to me before that there might be a similarity in reasoning between the James River Country Club and the Hampton Roads Assembly, the reason being, sir, that the James River Country Club is something that I and my family, particularly my wife, enjoyed on a regular, ongoing basis—I went there about twice a month—whereas the other represented—that is, the dance group—perhaps 10 hours a year, Senator, and I just didn't look upon it—when your man called me, I would have resigned immediately when I resigned from the James River Country Club had I even thought about it.

Senator METZENBAUM. No women members of that club, Hampton Roads Assembly?

Mr. MASON. At every function there are men and women there. Now, I do not——

Senator METZENBAUM. If there are dances, I sure hope so. [Laughter.]

Mr. MASON. I would think so, but I don't know who holds membership. I know that they send the bill and I pay it and it is sent to me, but I really do not know anything about the charter or who or are not members.

Senator METZENBAUM. Well, come back to my earlier question. Give me something in your background other than the fact that you say you are a fair person. I never heard—and I am not saying you are a bigot, but I never heard of a bigot who described himself as a bigot. Every bigot always says I am fair, I am this, I am that.

But tell me something that I can report to the overall committee that would indicate that notwithstanding your membership in this discriminatory club, the James River Country Club, that would say loudly and clearly to any black appearing before you, this is a man where you know you are going to get justice; he is not a bigot.

Mr. MASON. Senator, I would like to try to give you an answer which I think exists. Number one, as we all are aware, an extensive background has been undertaken on me and all other candidates by the FBI.

I believe in that investigation the very questions they asked are the same ones that you are now asking; that is, what is Mason in terms of his reputation for fairness and treating his fellow man in an equal fashion. I have to assume that I am here because they came up with favorable responses.

Secondly, Mr. Chairman, I do believe that in my practice of law, fellow lawyers were contacted, including blacks, who gave the same answer. One of my fellow lawyers is here this morning, Mr. Oscar Blayton, and I would not suspect that he would say there is any evidence other than my membership in a country club that would be deemed by people in the community to label me as being unfair.

I sat on the bench for about 12 or 14 years and I would like to think that the manner in which I conducted myself to blacks, to whites, to all who came before me met with their approval because I have never heard lawyer or person make any complaints about my effort at equal justice.

Senator METZENBAUM. Let me ask you some simple questions. Do you ever represent any blacks?

Mr. MASON. Do I?

Senator METZENBAUM. Did you ever, have you ever?

Mr. MASON. Absolutely.

Senator METZENBAUM. Pardon?

Mr. MASON. Absolutely.

Senator METZENBAUM. You have some black clients?

Mr. MASON. Yes, sir.

Senator METZENBAUM. And did you ever have any involvement or participate with the NAACP, the Urban League, the National Negro Scholarship Fund? I guess my point is financial support, not actual involvement, with any organizations that frankly are black-oriented.

Mr. MASON. Senator, I do not recall ever sending money to those organizations which you mention.

Senator METZENBAUM. I think one is called the United Negro College Fund.

Mr. MASON. Yes, sir. I am familiar with those. I do not ever recall supporting them financially. I would like to add, however, that you have information, I assume, in your packet regarding my earning capacity, what has been my gathering of assets.

It is certainly nothing that I can be particularly proud of. I have not done much in that regard, but I have tried to support my church, Old Dominion University, my law school, and I have given money, of course, consistently to the United Way, those things upon which I was asked.

And at no time, to my knowledge, Senator, have I ever been solicited by any of those organizations, and if so I suspicion I would have automatically sent them $25 or so because that is my nature.

Senator **Metzenbaum**. I may have further questions, Mr. Mason, and I would guess that Senator Thurmond and other members of the committee may have further questions.

Thank you very much.

Mr. **Mason**. Thank you, Mr. Chairman.

[Response to questions follow:]

Rec'd 5-10-88 SSM

SHANNON T. MASON, JR.
ATTORNEY AT LAW
[illegible] J. CLYDE MORRIS BOULEVARD
NEWPORT NEWS, VIRGINIA 23601

AREA CODE
(804)
599-6477

May 9, 1988

Honorable Joseph R. Biden, Jr.
Chairman of the Committee on the Judiciary
212 Dirksen Senate Office Building
Washington, D. C. 20530

Attention: Steve Metalitz, Esq.

Dear Mr. Chairman:

At this time, I am enclosing to you the questions submitted to me by your Committee, and my answers to those questions.

Trusting that this meets the Committee requirements, I am

Very truly yours,

Shannon T. Mason, Jr.

STMJR:njc
Enclosures
cc: Honorable Strom Thurmond (with enclosures)
United States Senator
218 Russell Senate Office Bldg
Washington, D. C. 20510-4001

1. The Court to which you have been nominated is famous for its expeditious handling of its docket. For example, according to the most recent statistics, it moves civil cases faster than all but two of the 93 District Courts nationwide. If you are confirmed, how will you help to maintain this enviable record of judicial efficiency without sacrificing the right of every litigant to thorough and thoughtful consideration of his or her claims?

   ANSWER: For the past years, I have been a work-oriented attorney. I rise at approximately 5:15 AM, and it is not uncommon for me to be in my office by 7:00 AM. I have taken pride in my office efficiency and movement of cases. I would bring that same diligence to my responsibilities as a Federal Judge. Also, in order to carry out the prideful record established by the United States District Court for the Eastern District of Virginia, I am certain that I would protect that record, and profit from the counsel available to me from the Judges who have earned such a reputation for expeditious handling of the docket.

2. The vast majority of the cases you have handled have been settled before trial. As an advocate, you have a great deal of experience as a negotiator. If you are confirmed as a Judge, your role in the settlement process will change. What, in your view, is the proper role of the United States District Judge in encouraging the settlement of cases in his Court?

ANSWER: I am of the view that a Federal Judge should encourage but not force settlement; it would be inappropriate for a Judge to exercise "arm-twisting" pressures, but the Courts should encourage settlement and the Judge should be available to assist the litigants, upon request, in efforts leading towards settlement.

3. In your responses to the Committee Questionnaire, you wrote that a Court should apply a "tight and narrow" interpretation to the meaning of statutes passed by Congress. This differs somewhat from the standard role for construing the meaning of statutes. For example, it is often said that criminal statutes should be narrowly construed, but that remedial statutes - for example the civil rights laws - should be given a broader interpretation. Do you think that a Judge is required to give the narrowest possible interpretation to every statute that comes before the Court? Or do you think that the standards for interpretation should be flexible?

ANSWER: Customary interpretation of statutes would require an analysis of and applying the plain and literal meaning of the words used in the statute. Criminal statutes should be interpreted by applying a "tight and narrow" interpretation of the words actually used. However, statutes falling into the category of being "remedial" (i.e., civil rights statutes, compensation statutes, health-oriented statutes, etc.) should be given a broader interpretation so as to accomplish the intent of Congress. One would neither want to expand nor contract the plain meaning of the words used by a legislative body.

QUESTIONS FOR SHANNON T. MASON, OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

1. MR. MASON, IN HIS FAMOUS DISSENT IN PLESSY v. FERGUSON IN 1893, JUSTICE JOHN HARLAN REFERRED TO OUR CONSTITUTION AS A "COLORBLIND" CONSTITUTION. WOULD YOU AGREE WITH THIS CHARACTERIZATION? ANSWER: Clearly yes.

2. MR. MASON, WHAT IS THE PROPER APPLICATION OF STARE DECISIS IN CONSTITUTIONAL LAW? SPECIFICALLY, WHAT IS THE DUTY OF A FEDERAL JUDGE WHEN CONFRONTED WITH A CASE IN WHICH ONE OF THE PRECEDENTS OF HIS COURT CLEARLY CONFLICTS WITH THE CONSTITUTION AS THAT JUDGE INTERPRETS IT?

ANSWER: It is recognized that the function of a District Court Judge is to follow the wisdom of Stare Decisis. It would be difficult to envision circumstances which might compel a Judge to stray from those ancient and valuable principles.

3 MAY 1988

Shannon T. Mason, Jr.

Senator **Metzenbaum**. Mr. Oscar Blayton of the Newport News, Virginia Branch, NAACP, is here. Mr. Blayton, we would be happy to hear from you. Mr. Blayton, we swear our witnesses. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Blayton**. I do.

TESTIMONY OF OSCAR BLAYTON, PRESIDENT, NEWPORT NEWS, VIRGINIA BRANCH, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. **Blayton**. If I may, Mr. Chairman, I would like to read in part from a letter which I sent to Senator Trible which sets forth some of the issues here.

Senator **Metzenbaum**. Yes. We would be very happy to have you do so, and the entire letter will be included in the record.

[The document follows:]

NEWPORT NEWS BRANCH
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
POST OFFICE BOX 785
NEWPORT NEWS, VIRGINIA 23607

April 12, 1988

The Honorable Paul S. Trible, Jr.
United States Senate
2101 Executive Drive
Hampton, Virginia 23666

Dear Senator Trible:

I trust that you do not object to this being an open letter; but I wish to communicate to you my perspecitve on an issue of considerable interest to Virginians in this part of the state.

The issue to which I refer is the opposition of the Newport News NAACP to Shannon Mason's candidacy for the appointment to the Federal Bench in the Eastern District of Virginia.

While I make this statement as President of the Newport News Branch of the NAACP, I would also like to say that I know Shannon "Skip" Mason considers me to be a personal friend, as I, him. However, our friendship does not qualify him for a judgeship. I have many friends who should not be appointed as judges. Some of my friends lack the requisite education and/or legal background; some of my friends lack the temperment or the ability to "get along" with their colleagues; and some of my friends lack the sensitivity and degree of perceptiveness necessary to assure the greatest degree of equity in the process of "Blind Justice." It is this lack of sensitivity and a lack of perception that are considered to be Skip's shortcomimgs as a judicial candidate.

The judicial system, as well as any repository of public trust, must not only be fair, but must also be perceived as being fair. This maintenance of the perception of fairness is the "higher standard" to which we must hold our public institutions if we are to have a truly democratic society. And in order for these institutions to be perceived as being fair, the principal decision makers within those institutions must also be perceived as being fair. By way of example, I would like to relate that during a recent conversation with a local white reporter, I suggested to the reporter that he consider joining the NAACP. The reporter declined the invitation for the time being, solely on the basis that it might have an adverse impact on the public perception of his ability to report on the Shannon Mason and James River Country Club stories fairly. Such a public perception may be justified in that the reporter would have freely and voluntarily joined an association which stands on the particular side of an issue which must be reported with objectity. Conversely, on one occasion, Judge A.Leon Higginbotham, while sitting as a Federal District Judge in Philadelphia in the mid - 1970's was asked by his colleagues to excuse himself from hearing a civil rights case because they felt that his being black might influence his decision. I heard of this incident through indirect sources, but I firmly believe that some white defendants in civil rights cases are uncomfortable with being tried by black judges. This is an example of an intolerable perception of the probability of fairness, however, because it did not take into account the content of the character of Judge Higginbotham.

Individuals are, in part, measured by their associations freely made. This is to say that an individual who joins a motorcycle gang is perceived in a certain light; an individual who joins a public service organization is seen in another light and one who joins a racially exclusive club is seen in yet another light.

It can not be denied that the policy makers of the James River Country Club wish to exclued Blacks, Jews and women (in a certain sense) from their process of association. This club allows participation to individuals based on certain measures of merit. In other words, no one is asked to join as a full voting member unless he is considered to be deserving of membership. By making this process inaccessible to Blacks, Jews, and women (to a certain extent) those individuals who make the policy for the James River Country Club assert the proposition that no matter how scholarly, no matter how great one's contribution to society, no matter what the content of one's character; if an individual is Black, Jewish or a woman, he or she could never DESERVE to fully associate with white Christian males. This is a racist and sexist process of association, and those individuals who promote and adhere to the notion that such a criterion for association is beneficial are bigots.

Skip freely and willingly joined, and over a period of years, maintained his membership in the James River Country Club. Skip Mason is not a racist, but our problem with him is that he freely, knowingly and willingly associated with bigots while simultaneously putting himself foward as one who would be perceived as fair a decision maker in all areas of the law, (including civil rights). For this reason, I would say that he, like many of my other friends should not become a Federal Judge.

There are those who say that our position is unfair, now that Skip has stated his intent to resign from the club. To this I must respond that Skip has known for some years that he has wanted to be appointed to the Federal Bench. He has also known that maintaining membership in an organization, such as the James River Country Club, which practices invidious discrimination is unacceptable behavior for an aspirant to the Federal Bench. And, I truly question whether he would have left the club absent a challenge on the issue. Finally, he should not have needed to be challenged on the issue before he resigned.

Senator Trible, our legal system, as well as our national sense of fairness are constantly evolving; and it is important that our judges and judicial candidates (no matter how well liked) be as fully evolved socially as the laws and the society which they are trusted to protect. For these reasons, we ask that you withdraw your nomination of Shannon Mason to the Federal Bench in the Eastern District of Virginia.

Yours truly,

Oscar H. Blayton
President

OHB/tf

NEWPORT NEWS BRANCH
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
POST OFFICE BOX 785
NEWPORT NEWS, VIRGINIA 23607

April 27, 1988

United States Senate
Committee on the Judiciary
224 Dirksen Building
Washington, D.C. 20510

Dear Sirs:

The issue which I wish to address before this Committee relative to Shannon Mason's candidacy for the vacant judicial position in the Eastern District of Virginia concerns the law and Association.

Law, is a process of authoritative control whereby certain members of a particular community establish and maintain a specific public order. This order is established and maintained by different participants in the public order process. Generally, it is considered that law is established by only the legislative participants in a community. However, authoritative control can be established by judges. When this happens, we call it case law. It can also be fair to say that the authoritative control which the judge exercises over his or her courtroom and the proceedings therein, is, in fact, for the purpose of establishing and maintaining a certain "law" within that courtroom.

It need not be said to your body that a federal judge wields an awesome amount of power over the lives of his or her fellow citizens. Law is a process; it is not static. And the individuals who act as decision makers within that process, can bring many different convictions, beliefs and "truths" to bear in a manner which determines the outcome of that process. We can not expect our judges to be homogeneous in their thinking, but, there are limits to appropriate convictions, beliefs and "truths" which a judge may hold. Whether an individual holds an inappropriate conviction, belief or "truth" can be determined by his or her actions. And one form of action is associaton.

Aristotle has said that every association is formed with a view to some good purpose. By this he meant that every individual who associates with another, or with others, does so with the belief that it is for the purpose of some good - either to himself, to some other or to a community as a whole.

Shannon Mason must have believed that his joining, and remaining a member of, the James River Country Club was for some good purpose as he saw it. The fact that the club practiced invidious discrimination was not enough to dissway Mr. Mason from joining and being a part of this group. If Mr. Mason wishes to associate with people who discriminate along racial and religious lines, that may be his right as a private citizen. But by joining such a group, he must realize that he communicates a certain message as to his position regarding invidious discrimination. And if Mr. Mason then wishes to hold himself out as a candidate for a position of public trust, he must accept the fact that he has previously communicated to a great number of people a certain personal position on invidious discrimination. His positon is unacceptable for a federal judge in this day and time.

It is incredible that Mr. Mason did not know that the James River Country Club bars blacks and Jews from membership. That organizaton is notorious for its discrimination. A number of young Jewish lawyers have for some years tried to stop the Newport News Bar Association from holding functions there due to the discriminatory practices of the club. And Mr. Mason is a member of the Newport News Bar Association.

I am not telling this Committee that Mr. Mason is a monster, or even a bad person. But not being a bad person is not good enough to qualify one for a judgship. Shannon Mason obviously did not see that it is inappropriate for a federal judge to belong to a club such as the James River Country Club. And this view was held even after he had been informed that such a membership would be inappropriate. I do not dislike Mr. Mason, but I believe that his obvious views disqualify him for appointment to the federal bench.

Yours truly,

Oscar H. Blayton
President

OHB/tf

Senator **METZENBAUM**. I would ask you not to read the entire letter.

Mr. **BLAYTON**. I did say in part, Mr. Chairman.

Senator **METZENBAUM**. Okay.

Mr. **BLAYTON**. I would like to say first that while I am President of the NAACP in Newport News, I am also a practicing lawyer——

Senator **METZENBAUM**. Pull that a little closer to you, please.

Mr. **BLAYTON**. I am also a practicing lawyer in the Hampton Roads area, practicing in the Federal as well as State courts. Also, while I'm making this statement as President of the Newport News Branch of the NAACP, I would like to say that I know Shannon Mason considers me to be a personal friend, as I him, but our friendship does not qualify him for a judgeship.

I have many friends who are not qualified to be Federal judges for different reasons. Some lack the requisite education or legal background. Some lack the temperament or the ability to get along with others, and some lack the sensitivity and degree of perceptiveness necessary to ensure the greatest degree of equity in the process of blind justice, and I believe this is where Shannon Mason is lacking in that degree of perceptiveness and sensitivity.

The judicial system, as well as any repository of public trust, must not only be fair, but it must also be perceived as being fair. We have inscribed "Equal Justice Under Law" over the portals of the Supreme Court, but we must do more than carve words into stone. We must ensure that the concept and the belief in the vitality of the concept are inscribed in the hearts of the people.

Individuals are, in part, measured by their associations freely made. There are some associations you have no control over, but some associations you make freely. For example, an individual who joins a motorcycle gang is perceived in a certain light. An individual who joins a public service organization is perceived in another light, and a person who joins a racially-exclusive club is seen in yet another light.

It cannot be denied that the policymakers of the James River Country Club wish to exclude blacks, Jews and women in a certain sense. Women may join, but apparently they may not be voting members of the club.

Senator **METZENBAUM**. Mr. Mason said that the club does have Jews. True or false?

Mr. **BLAYTON**. Well, I have talked to a number of individuals, both black, Jewish and women, concerning this. When I initially talked to some Jewish members of the community, all but one said no. One person did say to me, I believe there is one Jewish fellow that belongs, but he doesn't practice his religion. He is not married to a Jewish person and for all practical purposes we don't consider that person to be a member of the Jewish community.

There is a person who is in charge of a Jewish community organization named Norman Olshansky, I believe his name is, who has made a public statement to the press in our area that it is the concept among the Jewish members of the community that Jews are not welcome at this club.

Senator **METZENBAUM**. It is what?

Mr. **Blayton**. The concept of members in the Jewish community is that Jews are not welcome in this club. So for that reason, I would say, yes, Jews are excluded from membership.

Senator **Metzenbaum**. What you are really saying is your understanding is that there is one person born Jewish but not really practicing his Judaism, but that is all?

Mr. **Blayton**. That is my understanding, and that is not from direct knowledge, but from hearsay.

This club allows participation to individuals based on certain measures of merit. In other words, no one is asked to join as a full voting member unless he is considered to be deserving of membership.

By making this process inaccessible to blacks, Jews, and women to a certain extent, those individuals who make the policy for the James River Country Club assert the proposition that no matter how scholarly, no matter how great one's contribution to society, no matter what the content of one's character, if an individual is black, Jewish or a woman, he or she could never deserve to fully associate with white Christian males.

Senator **Metzenbaum**. Are you certain about the matter of women? What about widows of members? Do they remain members?

Mr. **Blayton**. It is my understanding from the newspaper accounts that women may be members but not voting members, so it is sort of a second-class membership, as I understand it. Now, that I have gotten from the paper and I would defer to some more diligent inquiry into the matter, but that is my understanding.

This is a racist and sexist process of association, and those individuals who promote and adhere to the notion that such a criterion for association is beneficial are bigots. Now, Mr. Mason freely and willingly joined and, over a period of years, maintained his membership in the James River Country Club.

I am not saying he is a racist, but our problem with him is that he freely, knowingly, and willingly associated with bigots while simultaneously putting himself forward as one who would be perceived as being a fair decisionmaker in all areas of the law, including civil rights law.

I find it somewhat incredible that Mr. Mason did not know that the James River Country Club bars blacks and Jews from membership because there has been an effort by some young Jewish attorneys in the area to prohibit the Newport News Bar Association, an organization to which Mr. Mason belongs, from holding functions there because the perception is it does not have or allow Jewish membership, and that has been an issue that has been raised in that bar association in which Mr. Mason, I believe, is active.

Senator Paul Trible has communicated to me that he believes to deny Shannon Mason the judgeship would be to punish him.

Senator **Metzenbaum**. Who said that?

Mr. **Blayton**. Senator Paul Trible in a response to my letter to him.

At issue here is neither a question of punishment nor of reward. At issue is how well the individual can serve the judgeship, not whether the individual is deserving of or can be served by the judgeship.

No one deserves to be a judge. Neither a judgeship nor any other position of public trust should be a reward. It is a position of service and the sole question is how well will the person serve.

Our legal system—and I am finishing up—as well as our national sense of fairness are constantly evolving, and it is important that our judges and judicial candidates, no matter how well liked, be as fully evolved socially as the laws and the society which they are trusted to protect.

For these reasons, we object to Mr. Mason's nomination to this judgeship.

Senator METZENBAUM. Mr. Blayton, you are a practicing lawyer, are you?

Mr. BLAYTON. Yes, sir, I am.

Senator METZENBAUM. And do you practice within the jurisdiction that Mr. Mason would be——

Mr. BLAYTON. Yes, sir, I do. As a matter of fact, I was in that Federal court yesterday.

Senator METZENBAUM. I think it takes a lot of courage on your part to come here knowing full well that there are not eight different district judges, as you might have in a place like Cleveland—six or eight, whatever the number is—but to know that any Federal matter you are going to have is going to come before this judge, if confirmed.

We are going to ask the Old Dominion Bar Association of Virginia for its opinion. That, as I understand it, is the black bar association of Virginia. Are you familiar with it?

Mr. BLAYTON. Yes, sir. I am a member. I don't think I'm current in my dues right now, but I am a member.

Senator METZENBAUM. Pardon?

Mr. BLAYTON. I said I am a member. I'm not current in my dues right now, but I am a member.

Senator METZENBAUM. I think we will ask them for their opinion, and I see that Senator Strom Thurmond, the ranking minority member, is with us.

Do you have any questions?

Senator THURMOND. Yes, I do, thank you.

Senator METZENBAUM. Before Senator Thurmond picks up, I ask unanimous consent to include in the record an article from the Daily Press dated April 1st, 1988. That paper is published in Newport News, is it?

Mr. BLAYTON. That is correct.

Senator METZENBAUM. Newport News.

[The document follows:]

NAACP assails Mason's club membership

By DOUGLAS ASHLEY
Staff Writer

NEWPORT NEWS — The local chapter of the NAACP will oppose Newport News lawyer Shannon T. "Skip" Mason's bid for a federal judgeship because Mason belongs to an all-white club, the NAACP chapter president said Wednesday.

"He knowingly participates in a club that has a membership policy ... which is considered to be racist," Newport News NAACP President Oscar Blayton said.

Mason, nominated in December by Sen. Paul Trible for a seat on the U.S. District Court in Norfolk, acknowledged Wednesday that he belongs to the private James River Country Club, which hasn't had a black member in its 56 years of existence.

But Mason responded that the membership had no bearing on his qualifications as a judge. He also said he would feel "some personal resentment if someone were to accuse me of some discriminatory activity."

As to why the club has no black members, Mason said, "The reason, I am told ... is that there has never been an application made by any of our black friends."

Political analysts say the issue could hamper Mason's bid for the judgeship, noting that that the Senate Judicary Com-

■ Please see Mason, A6

■ Mason

Continued from A1

mittee, which must approve Mason's nomination, has questioned the club memberships of previous nominees.

They also suggest the matter could become a problem for Trible, a Republican who is considering a run for governor next year.

"It will be something that will concern the Democrats on the Judiciary Committee, and they control it," said Larry Sabato, a political science professor at the University of Virginia.

Staff members with Sen. Joseph Biden, D-Delaware, chairman of the Judiciary Committee, said the charge would be looked at before the committee hears testimony on Mason's nomination, which would not be before late April.

Opened in 1932, the James River Country Club sprawls across 142 acres overlooking the James River in the city's Hidenwood section. Black leaders say the club has practiced a discriminatory membership policy by excluding blacks.

Blayton said Wednesday that Mason's membership in the club constituted a "participation in the process" of racial discrimination. That was what spurred the group to oppose Mason's nomination, he said.

Blayton said the chapter's legal redress committee agreed Wednesday to file a written objection to the nomination.

But Blayton, a lawyer, stopped short of calling Mason a racist, saying people have different ideas of just what a racist is.

"I know him personally, and I don't want him to think it's personal," Blayton said.

Mason, who said he has been a member of the club 15 or 16 years, said the matter had been discussed with Trible's staff prior to his being nominated. Mason said he did not think the membership constituted an "affirmative act of discrimination."

He also said he has never participated in a discriminatory act and in the past had been endorsed by the black Old Dominion Bar Association.

Trible could not be reached for comment.

Robert E. Sheldon, who has served as secretary of the James River Country Club for the past 12 years, called the racism charge "ridiculous."

Sheldon said there was no club policy against blacks becoming members. Club rules require an applicant for membership to be sponsored by two current club members, he said.

"There are no black members, and there have never been any blacks to apply, to my knowledge," he said.

Sabato, noting that new Supreme Court Justice Anthony Kennedy was forced to resign from a private club in San Francisco because it excluded women, said the charge against Mason could work to delay, if not undermine, his appointment.

"It would be an issue," Sabato said. And with presidential elections this fall, he said, "We're in a period where not all of these nominations are going to get through."

Daily Press (Newport News, Va.) April 1, 1988

NAACP widens effort to block judge nominee

By DOUGLAS ASHLEY
Staff Writer

NEWPORT NEWS — Virginia's NAACP director says the organization, following the lead of its Newport News chapter, will oppose the federal judicial nomination of Newport News attorney Shannon T. "Skip" Mason because of Mason's membership in an all-white private club.

In addition, said state NAACP Executive Director Linda Harden, the Virginia group will ask the national NAACP to use its lobbying power to block Mason's confirmation by the U.S. Senate for the judgeship.

Mason is a member of the James River Country Club, which has never had a black member in its 56-year history.

"I don't think that is an appropriate position for any candidate to hold," Harden said. "We will lobby against him as hard as we did against (former Supreme Court nominee Robert) Bork."

In Washington, a spokesman for Virginia Sen. Paul Trible, the Republican who nominated Mason for a vacant U.S. District Court seat in Norfolk, said Trible would discuss the matter with Mason early next week after returning from an overseas trip.

The spokesman, John Miller, said Mason's club membership was never discussed before Trible nominated him for the judgeship four months ago. "There has been no discussion about membership in any club," Miller said.

The developments Thursday follow a decision by the Newport News NAACP on Wednesday to

■ Please see Mason, A5

■ Mason

Continued from A1

oppose Mason's nomination because of his membership in the club.

Local NAACP officials say the club has a discriminatory membership policy. Mason's membership, they contend, constitutes his support of that policy.

Mason and club officials say no black has ever applied to join the club, which overlooks the James River in the city's affluent Hidenwood section.

Minority residents of the city said Thursday that the club has also discriminated against Jews, although on occasions a few Jewish members have been counted among the club's 800-family membership roster.

"The club has had token Jewish members in the past. But the general perception of the Jewish community ... is that it is a discriminatory club, and Jews are not welcome," said Norman Olshansky, executive director of the Peninsula's United Jewish Community Center.

Olshansky said the club now has one "token" Jewish member. Attorney Robert E. Sheldon, secretary of the club, said there are one or two Jewish members.

Olshansky and others suggested that Mason should resign his club membership or drop his judicial bid.

"I find it a little surprising that he wasn't advised of the consequences of remaining a member. It's a routine question," said state Sen. Robert Scott, a black lawyer and Democrat from Newport News. "He's certainly a fine gentleman and an excellent choice for a federal judge. I'm just surprised he wasn't counseled on this."

Wyatt Collins, who chairs the local NAACP's legal redress committee, which made the decision to oppose Mason's nomination, said a candidate for a federal judgeship should not belong to a club that discriminates. As a federal judge, Collins said, Mason would be asked to uphold the nation's anti-discrimination statutes.

"I'm not trying to holler racism," Collins said. "But that's the established rule for judges."

Mason would not comment on the issue Thursday.

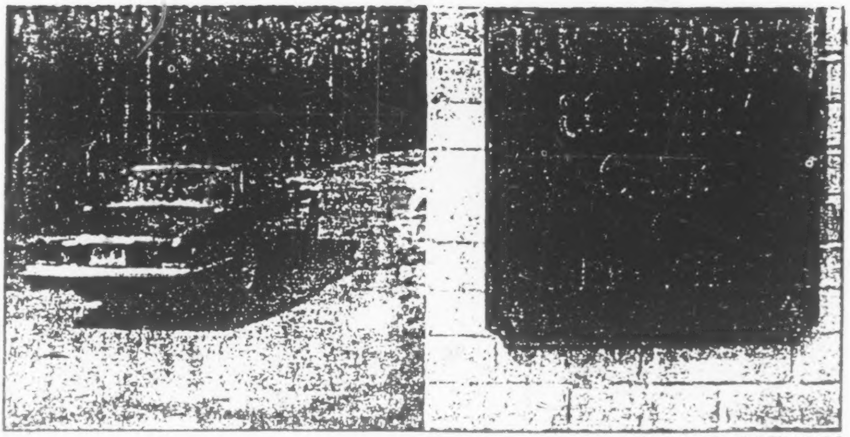
Political analysts say Mason's club membership could delay or ultimately undermine his judicial nomination.

They note that the Senate Judiciary Committee, which must approve Mason's nomination, has forced other nominees to resign such controversial memberships before giving their approval.

Analysts also suggest that the issue could prove politically troubling for Trible, who plans to leave his Senate office, and is being pushed to run for governor in 1989.

A spokesman for the state GOP in Richmond, when asked about the political implications of the issue, declined to respond.

"It's a matter for Senator Trible to address," the spokesman said.



Staff photo by BUDDY NORRIS

The country club entrance has been a barrier blacks have never crossed.

Officials on club's roster criticized, not resigning

By DOUGLAS ASHLEY
Staff Writer

NEWPORT NEWS — Federal judge nominee Shannon T. "Skip" Mason, who is being criticized for his membership in the all-white James River Country Club, is only one of 20 current or potential public officials who belong to the private club.

First District Congressman Herbert H. Bateman, six state-appointed judges, State Economic Development Secretary Richard M. Bagley, two state lawmakers and nine current or potential holders of local elected offices are also members of the club, according to a copy of its most recent membership roster.

One official, Hampton Mayor James L. Eason, already has said he will resign his membership because the club does not have any black members.

Some suggest that the other office holders should remove themselves from the club.

"I don't think someone running for a high office should belong to a club that practices discriminatory membership," said John McGlennon, a professor at the College of William and Mary who is active in Democratic politics.

The club has never had a black member in its 56-year history, and some club members, speaking on condition of anonymity, acknowledge that there is an "unwritten rule" **against sponsoring black and Jewish members.**

Some blacks and Jews on the Peninsula say Mason should resign from the club or give up his judicial bid. The Newport News and Virginia chapters of the NAACP have said they'll try to block his appointment to the federal bench.

In interviews conducted over the weekend and Monday, most of the public officials contacted who are club members said they do not think Mason — nor themselves — should have to relinquish the club membership.

"I don't see how being a member there will affect him being a judge," said Taylor C. Wilson, a 36-year club member and Hampton's commissioner of revenue.

"And I don't see how it would affect a little old commissioner of revenue," Wilson said. "I haven't heard a word — and I've been commissioner since 1971 — about my membership in the James River Country Club."

For some officials, the issue proved particularly difficult to discuss. Two judges refused to

■ Please see Club, A4

DAILY PRESS
ARTICLE

■ Club

Continued from A1

comment. More than half of the listed officials did not return repeated telephone calls from a reporter.

"It's a difficult question," said Hampton Judge Nelson T. Durden, the only sitting judge to respond to the inquiry.

"I think all judges should have standards. . . . It's more of how people perceive the appearance of any kind of impropriety."

Durden, a club member for 35 years, said he would consider resigning from the club if Mason is forced to do so. But he noted the difference in how state and federal judges are appointed and said his ultimate decision would be influenced most by state policies.

Durden said if his membership endangered his reappointment to another term on the bench by the General Assembly, he would resign from the country club. He pointed out that while federal judges are appointed for life, state judges must be reappointed every six years.

Newport News Commonwealth's Attorney Willard Robinson, a club member for 25 years, said he joined the club because of its social attraction.

"A person's social life is often separate from his professional life," Robinson said. "I'm no different from before I joined than after I joined, except I play golf."

Some said they think a public official's decision of whether to join the club should be an individual one.

"I believe it's up to the individual what they decide to do," said Hampton Del. S. Wallace Stieffen, a club member who said he was unaware of discrimination at the club.

Richard Bagley, the former Hampton delegate who now is Gov. Gerald L. Baliles' secretary of economic development, said he has kept his club membership in force but hasn't used it since assuming his state post.

"Each public official concerned has to answer those questions themselves," Bagley said of the membership. "It's not a factor in my life.

"I do believe in desegregation," Bagley added. "If there are things that need correcting, I hope this will do it."

C. B. Harrell, a 39-year club member who also is the commissioner of revenue in Newport News, said his job is to administer tax laws, not set policy.

"I can't see how it is any particular harm, really," Harrell said. "How does it affect my performance as a commissioner of revenue?"

Officials, candidates who belong to club

The following is a list of James River Country Club members who are public officials holding or running for elected or judicial office. One official, Hampton Mayor James L. Eason, has said he will resign.

CONGRESS:

Rep. Herbert H. Bateman, R-1st

STATE OFFICIAL:

Secretary of Economic Development (former Del.) Richard M. Bagley

HAMPTON:

Judges Nelson T. Durden and Louis R. Lerner.

Mayor James L. Eason

State Sen. Hunter B. Andrews

Del. S. Wallace Stieffen

Commissioner of Revenue Taylor C. Wilson Jr.

NEWPORT NEWS:

Judges Fred W. Bateman, Robert W. Curran, James H. Harvell III and Douglas M. Smith.

City Council members Joseph C. Ritchie, Donald N. Patten and Jerome W. Hogge Jr.

City Council candidate Robert E. Hawkins

Commonwealth's Attorney Willard M. Robinson Jr.

Commissioner of Revenue C. B. Harrell Jr.

YORK COUNTY:

County Supervisor Jere M. Mills Jr.

OLD DOMINION BAR ASSOCIATION

EXECUTIVE COMMITTEE

Officers

John W. Scott, Jr.
President
Fredericksburg, Va

[illegible] Harris
First Vice President
Franklin, Va

William T. Newman, Jr.
Second Vice President
Arlington, Va

[illegible]
Secretary
Newport News, Va

Roger L. Gregory
Treasurer
Richmond, Va

Raymond A. Jackson
Immediate Past President

MEMBERS

[illegible]
Charlottesville, Va

[illegible]
Richmond, Va

[illegible]
Chesapeake, Va

[illegible]
Alexandria, Va

[illegible]
Richmond, Va

[illegible]
Newport News, Va

William T. Mason
Norfolk, Va

Dennis L. Montgomery
Suffolk, Va

Margaret Poles Spencer
Richmond, Va

[illegible]
Alexandria, Va

[illegible] C. White
Richmond, Va

Jerry L. Williams, Jr.
Danville, Va

[illegible] A. Williams
Martinsville, Va

L. Blair Wimbush
Roanoke, Va

John W. Scott, Jr., Esq.
510 Princess Anne Street
Reply to: ~~Fredericksburg, VA~~ 22401

April 27, 1988

The Honorable Joseph R. Biden, Jr.,
United States Senator and
Chairman, Senate Judiciary Committee
224 Senate Dirksen
Washington, D. C. 20510
ATTN: Mr. Steve Metalitz

Re: The Nomination of
for the Position of Judge of the
Position of Judge of the United
States District Court for the
Eastern District of Virginia

Dear Senator Biden:

I am writing on behalf of the Old Dominion Bar Association of the Commonwealth of Virginia to advise the Senate Judiciary Committee that this Organization has never endorsed the nomination of Mr. Mason for the position of Judge of the United States District Court for the Eastern District of Virginia. Mr. Mason has never formally requested the endorsement of the Old Dominion Bar Association and has never presented himself for consideration by our Judicial Selection Committee. In order to be considered for endorsement by the Old Dominion Bar Association, Mr. Mason would have had to request an endorsement in writing, complete a questionnaire very similar to that of the American Bar Association, meet with the Chairman and at least one member of our Judicial Selection Committee for an informal interview, and, be considered by the Executive Committee of the Old Dominion Bar Association for approval. Mr. Mason has never requested or been subject to this process.

I would like to take this opportunity to advise the Senate Judiciary Committee that the two most recent appointees to the Federal Judiciary in Virginia, Judge Spencer and Judge Willis, both sought and received Old Dominion Bar Association endorsement and support after participating in the screening process outlined above.

It is my understanding that Mr. Mason listed the Old Dominion Bar Association as one of the groups that endorsed his candidacy. It is my understanding that Mr. Mason in fact was endorsed by the local affiliate of this Bar Association for the Hampton/Newport News, Virginia, area approximately two years ago. Needless to say, the support given Mr. Mason by an affiliate is not the endorsement of this Statewide Bar Association.

~~On~~ April 23, 1988, the Executive Committee of the Old Dominion Bar Association voted to support the position taken by the Virginia State Conference N.A.A.C.P. by opposing all candidates for judicial appointment who are members of racially segregated social clubs or organizations that practice invidious discrimination. If Mr. Mason is a member of such a club, or was a member of such an organization at the time of his nomination, the Old Dominion Bar Association opposes his candidacy for judicial appointment as a matter of policy.

Very truly yours,

John W. Scott, Jr.

John W. Scott, Jr.,
President
Old Dominion Bar Association

JWS:cs

JOSEPH R BIDEN JR, DELAWARE CHAIRMAN
EDWARD M KENNEDY MASSACHUSETTS
ROBERT C BYRD WEST VIRGINIA
HOWARD M METZENBAUM OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G HATCH, UTAH
ALAN K SIMPSON, WYOMING
CHARLES E GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J HUMPHREY, NEW HAMPSHIRE

MARK H GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L WOOTEN, MINORITY CHIEF COUNSEL
R J DUKE SHORT MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

May 5, 1988,

John W. Scott, Jr., Esq.
President, Old Dominion Bar Association
510 Princess Anne Street
Fredericksburg, VA 22401

Dear Mr. Scott:

The Judiciary Committee has received your letter of April 27, 1988, addressed to Chairman Biden, concerning the nomination of Shannon T. Mason, Jr. to be United States District Judge for the Eastern District of Virginia.

As you know, the Judiciary Committee held a hearing on this nomination on April 28, at which I presided. At the hearing, I ordered that your letter, on behalf of the Old Dominion Bar Association, be placed in the public record.

In acting on nominations to federal judicial posts, the Committee ~~seeks~~ to develop as complete a record as possible concerning the qualifications of each nominee. The views of voluntary bar associations, whose members are familiar with the nominee's qualifications, are valuable components of the record before the Committee. We are particularly interested in the views of the minority bar associations in the state in which the nominee will sit if confirmed.

Your letter indicates that the Old Dominion Bar Association reviewed the qualifications of the two previous nominees to the District Court for the Eastern District of Virginia, but that Mr. Mason's nomination has not been so reviewed. In order to supplement the record before the Judiciary Committee, I request, on the Committee's behalf, that the Old Dominion Bar Association review Mr. Mason's nomination, and report to the Judiciary Committee its recommendation, or any other comments it deems appropriate. In order to facilitate your association's response to this request, I enclose a copy of the public portions of the questionnaire that Mr. Mason has completed at the request of the Judiciary Committee.

By copy of this letter, I am advising the nominee of this request. He may wish to contact you directly to arrange an interview or provide any other information that would facilitate your association's review of his nomination.

Page 2

In order to avoid any undue delay in the Committee's consideration of this nomination, I urge the Old Dominion Bar Association to conduct its review, and report its conclusions, as promptly as possible. If the Judiciary Committee can help to expedite this process in any way, or if you have any questions concerning this request, please contact the Committee's Chief Nominations Counsel, Steve Metalitz, at (202) 224-8191.

Thank you in advance for your immediate attention to this request. I look forward to receiving the report of the Old Dominion Bar Association on this nomination as soon as possible.

Sincerely,

Howard M. Metzenbaum
United States Senator

cc: Shannon T. Mason, Jr., Esq.

OLD DOMINION BAR ASSOCIATION

EXECUTIVE COMMITTEE

Officers

John W. Scott, Jr.
President
Fredericksburg, Va.

Alfreda Talton-Harris
First Vice-President
Franklin, Va.

William T. Newman, Jr.
Second Vice President
Arlington, Va.

Aundria D. Foster
Secretary
Newport News, Va.

Roger L. Gregory
Treasurer
Richmond, Va.

Raymond A. Jackson
Immediate Past President

MEMBERS

George A. Bates
Charlottesville, Va.

Angela P. Bowser
Richmond, Va.

Leonard L. Brown
Chesapeake, Va.

Nolan B. Dawkins
Alexandria, Va.

Roland D. Ealey
Richmond, Va.

Joyce Melvin-Jones
Newport News, Va.

William T. Mason
Norfolk, Va.

Dennis L. Montgomery
Suffolk, Va.

Margaret Poles-Spencer
Richmond, Va.

Inga A. Watkins
Alexandria, Va.

Bessida C. White
Richmond, Va.

Jerry L. Williams, Jr.
Danville, Va.

Trudy A. Williams
Martinsville, Va.

F. Blair Wimbush
Roanoke, Va.

Reply to: ____________________

June 13, 1988

The Honorable Howard M. Metzenbaum
United States Senator, Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

RE: Views of Old Dominion Bar Association Regarding the Nomination of Shannon T. Mason, Jr. for the Eastern District of Virginia

Dear Senator Metzenbaum:

This letter is written in response to your letter of May 5, 1988. In that letter you requested "that the Old Dominion Bar Association review Mr. Mason's nomination and report to the Judiciary Committee its recommendation, or any other comments it deems appropriate." We thank you for your letter written on behalf of the Committee.

We wish to inform the Committee that the Old Dominion Bar Association at its annual convention held May 27-29, 1988 voted to oppose the confirmation of Shannon T. Mason, Jr. as a federal judge for the eastern district of Virginia. For compelling reasons of principle rooted in the history and purpose of this bar association we must urge that this nominee not be confirmed.

Since receiving your letter, this Old Dominion Bar Association ("ODBA") has carefully considered the credentials of Shannon Mason, Jr. We have also reviewed the transcript of Mr. Mason's confirmation hearing of Thursday, April 28, 1988 ("TR. C.H."); and the public portions of the questionnaire Mr. Mason submitted to the Judiciary Committee. Subsequent to receiving your letter, we contacted Mr. Mason and invited him to participate in an interview with this Association which was conducted on May 23, 1988. Mr. Mason consented to the taping of that interview. (Transcript, ODBA, p. 42). A transcript as well as a copy of the tape of this interview is being provided to the Committee with this letter. ("TR. ODBA"). We have also reviewed additional documents, copies of which are appended to this letter.

Our investigation of Mr. Mason primarily considered issues involving race, religion and gender. These issues are of historical significance to this bar association.

In 1941, in response to inequities in the legal and judicial systems in the Commonwealth of Virginia a handful of black attorneys founded the Old Dominion Bar Association to seek equal justice under the law for black citizens. As a predominantly minority bar association, ODBA continues to pursue, among its goals, the equal administration of justice without the discriminatory impact of race, creed, religion and gender. Therefore, to receive ODBA's endorsement and support, a judicial candidate must unequivocally reflect a commitment, through word and deed, to the fundamental principle that all citizens, without discrimination on the basis of race, gender, creed, or religion, are entitled for fair administration of justice. Mr. Mason has demonstrated a lack of sensitivity to, and a willingness to ignore and to participate in racial discrimination.

In our view, on the issue of racial fairness, Mr. Mason has demonstrated a painful lack of sensitivity. He regrettably, has demonstrated to us a blindspot that in our view, disqualifies him for service as a federal judge. Mr. Mason was a longtime member of an enterprise that practiced racial discrimination and the evidence indicates religious and possibly gender discrimination as well. That, at least as to race, he was aware of the exclusion, did nothing about it because he did not see himself as a "crusader." That nearly two years after his name had been submitted to the Justice Department for consideration for the federal bench, he continued his membership and resigned only on April 11, 1988, just two weeks prior to his confirmation hearing of April 28,

1988. Moreover, Mr. Mason's resignation was extremely reluctant and he maintains to this day the he would not have resigned but for the nomination. We are even precluded from addressing an issue of an eleventh hour conversion, because there was no conversion. Mr. Mason views his resignation as a means to facilitate his confirmation, but sees no reasons, independent of confirmation concerns, which would warrant his resignation.

Mr. Mason simply fails to perceive that membership in an enterprise which excludes on the basis of race seriously compromises, in the minds of those in the excluded categories who would appear before him, the notions of fairness and impartiality essential to the concept of justice. An eleventh hour resignation has its own problems, but here we have much more. We are presented with a nominee who is aware of the Club's exclusionary practices and who, despite that awareness, has no personal regrets about his membership. A nominee, who further makes it plain for all the world to know, the Club's exclusionary policies notwithstanding, that he would not have resigned but for the nomination for he found the rewards of the Club "pretty satisfying." (TR. ODBA p. 31). How can the excluded groups feel confident that Mr. Mason will in fact adjudicate fairly or will even have the ability to adjudicate fairly their claims (especially claims arising under the civil rights laws) when he himself has no regrets about having been a member of a discriminatory enterprise?

Even after his eleventh hour resignation and when squarely presented with the obvious racial exclusion of which he was then, and is now, cognizant, this nominee saw no duty to act in any way differently from what this record demonstrates. For these reasons, Mr. Mason does not deserve confirmation.

Let us briefly review the Record.

Exclusive Membership Policies of James River Country Club:

- That Mr. Mason for seventeen (17) years has been a member of the James River Country Club which in 56 years has never had a black member, (TR. C.H. p. 45).
- As to whether there are black members, Mr. Mason responded in the ODBA interview, "I would be a fool to think there are black members of that club. If so, they never attend because I have never seen them there." (TR. ODBA p. 21).
- He went on to say: "If the question you have, is there some form of implied exclusion of those two categories, blacks and Jews, I would tend to think that the mere existence of the people moving in and about the club would prove the black thing. What it would prove about Jews, I cannot say because I am not able to say who's a Jew when I see one. (TR. ODBA pp. 22-23).
- **Further Mason acknowledged:** "You know, you have to be rather unobservant not to recognize there are no black members. (TR. ODBA p. 23).
- Later, in the interview, Mason agrees that the membership policy of the James River Country Club discriminated against blacks. (TR. ODBA p. 35).

It is palpably clear to this bar association that Mr. Mason as a Class A member of this Club and as a perceptive and intelligent lawyer, knew that there was a policy and/or practice to exclude blacks from membership in the James River Country Club. He was also made aware of similar concerns regarding Jews (discussed separately below) and the issue of the possible discriminatory treatment of women is a matter that simply did not merit his attention. (TR. ODBA pp. 19, 21).

The lack of black members in the Club was the subject of "light conversation" (TR. C.H. p. 46) in an informal private discussion with friends after he had been considered for a judgeship the first time. (TR. ODBA p. 25). Mr. Mason readily concedes that he took no action to change the membership selection policy of the Club. For this Association, the inescapable and troublesome conclusion is that Mr. Mason did not care that the Club practiced discrimination, or more serious yet, he tacitly endorsed the discriminatory policy. Mr. Mason's silence in the face of prolonged invidious discrimination suggests that he lacks the judgment and sensitivity necessary for service as a federal judge.

Nominee's Views Regarding His Individual Responsibility and the Exclusionary Practices of the James River Country Club ("Club"):

- In commenting on his informal conversations with friends about the Club's exclusionary policies, Mr. Mason indicated that they did nothing to change the policy:

> "You're now talking about close friends. You're not talking about crusaders. You're not talking about people saying, hey, that's a grand idea. Let's go out and do something." (TR. ODBA p. 25)

Later, in the interview, Mr. Mason says:

> "I never took the position that there is any kind of moral fire within my belly to go out and correct what is perceived to be wrong by some. And you're making the argument, the one that I mentioned earlier that once you walk through the door, you're tainted and then if at any time it came to your attention there were no blacks,

> no Jews there you had some kind of moral duty to then get out, rather than continue with what a private club itself as an individual right of we Americans to be members of individual organizations. And I think probably, ... that is getting close to where you and I philosophically, intuitively may disagree.
>
> (TR. ODBA p. 37)

Mr. Mason goes on to say:

> "I never looked upon myself as participating in an affirmative act of downgrading anybody. I looked upon myself as trying to provide by virtue of my hard work and my success some of the creature comforts that were available to me and I could provide to my family. I was not building a wall to keep anybody out, I was trying to get in and share what they had to offer and this is a philosophical difference that maybe I and Jews and blacks and whoever else it is who may not be members of those clubs who would have some kind of fundamental difference.
>
> (TR. ODBA p. 38)

Mr. Mason is correct insofar as he realizes that generally, blacks, Jews, and other excluded Virginians would fundamentally differ with his position. The Justice system cannot be perceived to be any fairer and impartial than the judges who administer it.

As a direct result of Mr. Mason's conduct regarding this Club, he is perceived by many black Virginians to be insensitive and indifferent to racial discrimination. Mr. Mason actively participated in the Club with full knowledge of its racially exclusive policies. His last-minute resignation was reluctantly offered, not to protest or even express concern about those membership policies but instead to facilitate his confirmation to the federal judiciary. Thus, under these circumstances, his desire to serve as a federal judge is an affront to many black citizens who have experienced, still experience, and will yet experience the sting of exclusion, of unequal opportunity and differences based on race. For many Virginians, given his sensitivity to racial discrimination, the nominee is not capable of fairly and competently adjudicating cases which present complex and delicate issues of racial discrimination.

And when Mr. Mason states he sees no moral issue here, and perceives no moral wrong, then the ODBA can only conclude that he is simply blind to the injustice of racial exclusion. (TR. ODBA 31, 39). He focuses entirely on the comforts that he enjoyed (TR. ODBA p. 31) and benefits which he earned ("I wanted to get in and enjoy the privileges that me and my family could have at that Club." (TR. ODBA p. 38). However, these are "benefits" that could not be earned by blacks no matter what their reputation and experience. And it is the business of this committee to determine whether by his choices, moral and otherwise, he has exhibited the necessary character on these issues of racial and religious equality to receive a lifetime appointment to the federal bench. We do not believe that he has.

Membership Policy of the James River County Club as to Jews:

Mr. Mason was President of the Newport News Bar Association in 1981. That year, Jewish lawyers objected to holding a Newport News Bar Association function at the James River Country Club. The lawyers protested the use of the Club for bar association purposes, writing that

> "[I]t is therefore unfortunate
> that the dance is held in a

> facility with a reputation for having an exclusionary membership policy." (Letter dated November 30, 1981, copy attached). [The copy is unsigned, however by separate letters dated June 7, 1988, the lawyers affirm that they signed the original letter to Mr. Mason. The letters of affirmation are attached.]

Consistent with his failure to oppose the racial discrimination at the Club is Mr. Mason's inaction regarding the Newport News bar association activity held at the Club during the year of his presidency. Both in his recent interview with the ODBA and at his confirmation hearing the issue of the practices and policies of the James River Country Club regarding the membership of Jews has been explored.

- The nominee indicates he has been told by the manager that there are Jewish members of the Club, but the nominee himself does not know that to be a fact. (TR. C.H. pp. 45-46; TR. ODBA p. 22).

> "Whether or not they are practicing Jews - I'm not so sure I know what a practicing Jew is - but whether or not they are practicing Jews, I cannot answer you. (TR. ODBA p. 22).

Having stated at his confirmation hearing that he did not know personally whether the club had any Jewish members, Mr. Mason goes on to add (if there are Jewish members), "I am certain, in my own knowledge that it's relatively few." (TR. ODBA p. 22).

And later when asked if there was an exclusionary policy as to Jews, Mr. Mason responded (in contrast to confirming such a policy as to blacks):

> "What it would prove about Jews I cannot say because I am not

> able to say who is a Jew when I see one." (TR. ODBA p. 23).

Two other questions were asked of Mr. Mason during the course of his interview with the ODBA which indicates that he has completely missed the mark regarding acceptable behavior on these sensitive and complex issues:

> Question: Did you ever think that there was a contradiction in there, that you were trying on the one hand to build this image [of fairness] and then tearing it down on the other hand by belonging to this organization?
>
> Answer: No.
>
> (TR. ODBA p. 37-38)

> Question: Do you think that by your membership those types of people [there are some over there and I'm sure there are, who would absolutely die rather than having a black or Jew or whatever else it is, in the Club] feel that you are lending your credibility and your prestige to their philosophy by virtue of your membership?
>
> Answer: No.
>
> (TR. ODBA p. 39-40)

All of the citizens of Virginia deserve a federal judiciary composed of persons, who in addition to possessing technical skills, have and demonstrate a commitment to equality. Morever, nominees must have the character and strength to reflect that commitment. Nothing short of this is acceptable in judicial candidates who seek a lifetime appointment. Though he may possess other strengths, Mr. Mason's actions and inactions on issues involving racial and religious exclusion will not serve to inspire confidence in the federal bench in Virginia.

We urge you not to confirm.

Sincerely,

John W. Scott, Jr.
Immediate Past
President

INTERVIEW WITH SHANNON MASON

Newport News, Virginia

May 23, 1988

(12:20 p.m. - 1:20 p.m.)

Interviewer I: Briefly outline for me your background in terms of education, in terms of practice here in Newport News.

Mason: Number one, I was born and raised in Norfolk Va. I attended public school there. I now learned this morning that Andrea and I graduated from Old Dominion, I think I was a little ahead of you.

Interviewer II: I think, maybe a couple of years.

Mason: I then went to Marshall-Wythe School of Law in Williamsburg, I practiced law, I was admitted to the Bar in 1962, I practiced law in Norfolk for about, number one I was a law clerk to Judge Walter Hoffman of upon getting out of law school. I then commenced practice of law in Norfolk with a firm that was called Preston & Preston, I, with them we opened a branch office in Newport News, twenty, twenty-two years ago. And about twenty years ago I then moved my family here from Norfolk and have been a resident in Newport News ever since. So my family, my children were raised and, primarily raised and educated in public schools in Newport News.

Interviewer I: Tell a little about, about your law practice

Mason: All right, I have historically owned my entire law practice, I would say, 80 percent of my work has been primarily as a litigator, I represent the interest of some insurance carriers, I also have done other work such as domestic relations and the general practice type things. But certainly over the past seven or eight, maybe ten, years, I have tended to phase that out; I think I have become so dominated by the demands placed upon me that I have become a litigator, I also represent, for instance, I represent locally on select matters the Newport News Shipbuilding and Drydock Company. I do that because one of my former partners, named Billy Ferguson has been representing them for all of his life and he passed away about eight years ago, maybe ten, but whatever it is, that has been the type of work I have done. I have been primarily civil, primarily a litigator, I have done some criminal work perhaps mostly lower court ....

....

more than likely I would send someone who was more familiar with the problem than I was.

Interviewer I: So your practice has pretty much been a firm practice or a sole practice?

Mason: Let me answer that question a little bit longer. When I started practice - until about 19 and 70......... (Let me close,) I was in a law firm that (all of us did) almost, Tort Litigation, Insurance Litigation that type thing.

Interviewer I: How many members in the firm?

Mason: At max there were then eight. When I came to Newport News, I was with that firm. It was somewhere around 1970 and 71 that that firm and a very pleasant environment split up and they went to Virginia Beach from Norfolk. The question was whether or not I would leave Newport News and go with them to Virginia Beach and I elected to stay here and I continued then as a sole practitioner. I then went with Billy Ferguson for a period of five years in which there were just two of us in the firm. But at all times I was doing that which I did. And not, we were not sharing in any way, we were sharing overhead only.

Interviewer I: Ok, and your practice was pretty much, has pretty much been a civil practice?

Mason: Yes.

Interviewer I: Is that correct?

Mason: Yes. And let me, Dennis, let me add that then I went with a law firm that was called Mason, Gibson, Cowardin and Martin, there were about six or seven of us in that firm, I continued to do exactly which I was doing. I did not do anything that they were doing so that really we were not a firm, we were sort of sharing overhead.

Interviewer I: As I understand the judgeship or at least the position in the Eastern District of Virginia will involve, I won't say extensive but it will involve a considerable amount of criminal work. What can you, what would you suggest or say with regard to your experience in the preparation of............

Mason: On top of it also as I'm sure you know the federal judiciary set-up has courses and instructional material that assist judges in making this type of transfer and I'm sure you are primarily a criminal judge they would have the materials to assist you to becoming civilly oriented.

Interviewer I: One of the concerns - we as an association have, has to do with pro bono work. You're familiar with pro bono work and what we mean by that?

Mason: Yes.

Interviewer I: Can you tell me anything about your background and experience or the type of pro bono work if any, that you've done in the past?

Mason: Yes, Dennis, times get confused but I would say that somewhere in the period of about 1965, no, that wouldn't be accurate, because I had come to Newport News. It would be somewhere between 1970 and 1968 and 1970-72 we had a pro bono operation which I participated in through the Newport News Bar Association. We used to come downtown and there was a store front down there.

Interviewer III: Price history.

Mason: Price history and you would give your time and then you would meet the people; primarily domestic relations, landlord/tenant type problems and then you would follow up, to handle it in your office. I did not know Dennis.........that will work in the sense that I ---- you use the word .... in the sense of not ____ but to have an extensive pro bono effort, I cannot claim that.

Interviewer I: What would you say would be the nature of your clients but I don't mean if you would represent mainly and I guess I'm being too candid in terms of (maybe too strong word) the character of your clients meet mostly; Business people, you represent any blacks or black companies, can you describe the field of your clients if any?

Mason: Yes, but you have to be fair and perhaps listen to me.

Interviewer I: All right.

Mason: When you represent an institutional client, insurance carriers, and when people run into each other in automobiles there is not a racial context there. People hit, somebody is sued and that file then comes into my office. So I am either representing a white person who is President of his own company or a black person who might fall in the same category. The only difference is they were insured by an insurance company who sent the case to me.

Interviewer I: Sure, I guess what I'm getting at is the sense I get in that example you would be among your clients would be insurance companies.

Mason: That's correct.

Interviewer I: Ok. I guess my question is, expand on that. Fine. One group of people that you represent insurance, I think you mentioned that another client you have is Newport News Shipbuilding from time to time.

Mason: Yes.

Interviewer I: Or whatever.

Mason: Yes.

Interviewer I: Without necessarily giving names but is your practice made up mainly of business clients i.e. insurance companies and corporations? Or is your practice made up mainly of divorce, divorces?

Mason: I understand what you're saying. Number one, because I am primarily institutionally a lawyer, insurance carriers, the shipyard; I do not represent individually to my knowledge, other than a walk-in off the street, anybody on an ongoing basis. I do not represent any of the companies in town. Obviously, the shipyard is a company in town. But I do not represent any individual businessmen. I do represent blacks, whites whoever it is comes to my door either from an institutional source or from somebody either knowing me or knowing my neighbors and have called me because they've got some kind of problem.

Interviewer I: I guess, what can you say, what is it that you feel is in your background that has prepared you for a federal judgeship?

Mason: I've spent - from day one, I was introduced to the federal court, that's where I started work as a law clerk. I have spent twenty-five years in what I consider to be the dedicated, disciplined role of a lawyer. I am a worker. I am not a lick'em stick'em lawyer who runs into a court and flies by the seat of his pants. Surely not many of those out there but I just want to be sure that you know that I am not one of those. I have been a diligent student of the law. I have worked my buns off. In a combination of those factors, I believe I present the skills that would permit me to be a good lawyer or a good judge regardless of which type of practice .... criminal, civil practice.

Interviewer I: Are you sitting much?

Mason: In the beginning yes, by as much I would say as fifteen days a year.

Interviewer I: Ok.

Mason: Dennis don't hold me to that.

Interviewer I: Sure.

Mason: In the latter portion of my sitting on the bench changes in state statutes which (we don't want to use substitutes much; they cost us a lot of money) and so that I would say that in the last two years or so that I was doing that type work it might be two or three times a year.

Interviewer III: In Newport News, do you generally have vacations that you could predict and the judge would just set it up and call you in advance can you cover certain days?

Mason: A great deal of the problem seems to manifest themselves when a judge would call at 8 o'clock in the morning or his clerk would call and say that the judge is sick or had to go out of town or something, can you run down here and cover. And so that it was in that category that you sort of make yourself available do the best you could often on short notice.

Interviewer I: OK. With regard to the Old Dominion Bar Association how long if you, let me ask you first, are you aware prior to this, have you been aware of the existence of the organization?

Mason: Yes.

Interviewer I: How long?

Mason: Dennis, I can't answer that question, I can tell you this, somewhere around two or maybe three years ago, my name was submitted by Senator Warner along with Judge Jim Spencer in Richmond and Wayne Lustig, a lawyer in Virginia Beach. At that time, I'm sure each of the legal groups involved, each of the individuals involved were endorsed by various standards. The local chapter of the Old Dominion Bar Association were kind enough to endorse me at that time. I am certain that I knew of the existence of that Bar Association before that, but I have no idea for how long a period of time.

Interviewer I: ....

__Mason__: If my recollection is correct, the present City Attorney, Verbena, was then President or something of the Old Dominion Bar Association locally, the local chapter.

Interviewer II: Well then, I guess you're accurately known at the Peninsula Bar, you are an affiliate of both main Bars. All right. And I believe in '85, in 1985 the time period that you're speaking of, that sounds about right?

__Mason__: I think so. All I know, it was about two years ago when time does fly so, it probably would be '85.

Interviewer II: And is it your recollection then that at that time when you got that endorsement that was not only from the Peninsula Bar, but the Peninsula Bar was acting as a chapter of the state-wide bar. Did you know that there was a distinction or......?

Mason: I knew that there was a distinction. I don't believe I had ever identified in my mind that it was the Peninsula Bar Association. I was of the impression that the local chapter of the State organization, the local chapter was endorsing me.

Interviewer II: I see, so you didn't actually at a particular point ask the State Bar because you weren't aware that there wasn't a distinction, if I'm understanding this correctly.

Mason: That's my excuse, I won't deny it?

Interviewer #2: Ok, Ok, All right. If I can back up for a little bit, we are moving kind of fast. How long have you been with Mason, Gibson.... I'm sure I have the names out of line here, I don't want to step on anybody's toes.

Mason: You're right. That relationship, I believe, commenced in 1979 or 1980. It continued for a period of eight years. It technically dissolved in July of last year when Billy Cowardin left the firm and went with a larger firm from over in Norfolk, ... and Kinowes. So the remaining numbers of the firm stayed exactly where we were because we owned that building. But it was known even before Billy Cowardin left that our firm was not going to continue going in its present form and in fact the other members of the firm, Jack Gibson, etc. went over and bought a place in Oyster Point. So, for the last four months since December, five months, I have been sitting alone in a building which three of us own and which formerly had seven lawyers [instead of the two]. But, thank God, we sold it about three months ago and so that I am now a tenant in my own building and very glad that I am.

Interviewer II: Let me ask you, about your work with Judge Hoffman when you came out of law school. How did you, how do you view that experience and if you can tell any memorable decisions or cases that you worked on with Judge Hoffman. What stands out mostly in your mind about that experience?

Mason: Number one, perhaps the greatest experience of my life was working for Judge Hoffman and number two, the thought that I could, twenty-six years later come back to that Court and he still is there. Obviously, he is looking with some excitement about the idea of one of his old law clerks coming back. It was a rich opportunity because you for the first time, you're put in a position were you can feel [his] work and you are in the court room, you're working with a Judge and Judge Hoffman was, is, I think, by nature a professor so that there was only one Judge in the Court, now there are five. And when we went to lunch, we went to lunch with Judge Hoffman and Judge Hoffman used lunch as a chatting session. You just learned an awful lot going to lunch with Walter Hoffman. Looking back upon any significant cases, I do recall an opinion which I wrote that was interesting because they were floating tunnel sections to put in the Hampton Roads Bridge tunnel and somebody was hurt in one of them while they're sitting on the pier tied up and being prepared, taken up the middle and drop them into a trench and the question was whether or not that was a "vesseling" which in the meaning of admiralty law, and I looked up an awful lot cases and learned an awful lot of admiralty law. In fact, the only case that was affirmed-that I had that went to the Fourth Circuit - and it was affirmed. I'm sure if I thought I could come up with others but at this moment, that's the only one that comes to my mind from a quarter of a century ago.

Interviewer II: Were you involved in any civil rights litigation? Did you have the experience or the opportunity to be around when any of that was going on?

Mason: Again, I don't think so. Let me tell you the atmosphere. In 1962, when I went with Judge Hoffman, there had just been that flurry of litigation involving school integration that I believe, it was Judge Hoffman in about 1954 or 55-- somewhere in there -- I know that I was aware of it, I just seem to have a recollection of those things kept coming back for hearings, for review or staff support. I just do not know, I do know that of course Judge Hoffman was very conscious of it, participating in that and it seems to me that he had some of that litigation had almost dominated the docket for two or three years before my arrival; so that I cannot recall sitting there and being a participant or observing any of those cases but I do have at osmosis feeling that I did.

Interviewer II: Ok. Have you been on any boards or commissions or agencies? You're talking about your pro bono work when you said this Bar had a ------- operation. You said roughly '68 to about '72 that's your recollection. (I think that is in the neighborhood anyway). I remember Legal Aid started the here in 1977 and that was, you know, a period of time after the pro bono work. But have you, can you tell us any agencies or boards or commissions that you belong to that you are either primarily devoted to low income people or getting (you know) free legal aid to organizations.

Mason: I want to start off by saying no. I ought to expand upon that. I have given in my judgment that which constitutes some form of contribution to a bunch of things. I have been a active participant in law. I have served of the various panels of the, some of the panels of the state bar, I am currently a member of the State Disciplinary board in which Sharon Coles is on with us.

Interviewer II: Right.

Mason: That's been going on, I'm in my last year. At the end of six I had been President, you're perhaps a member of the Newport News Bar Association. I served with a feeling of contribution to the Board of Visitors of Old Dominion University for a period of eight years. I think I would be a little bit sensitive if somebody told me I had not given of my time freely to certain things; but if you narrow the question to giving of it to poor or disadvantaged people, I cannot say that I have. Simple as that.

Interviewer II : Why is that? Is it because the opportunities didn't present itself or you were too busy in your practice?

Mason: I don't ever recall anybody inviting me to become involved in something in which I've said no. I have been damn busy in my practice but I, I'm reasonably comfortable that if somebody has called me and said can you help with such and such that did in fact benefit lower income or disadvantaged people, I am sure that I would have said yes to that just as I have to other things and I don't think anybody has ever asked me since the pro bono period of the Newport News Bar Association.

Interviewer II: Then you did not sign a pro bono list with

Legal Aid? They have a pro bono program.

Mason: I hate to admit my ignorance, but I did not know they had such a list and I don't think they have solicited me. And how that happens they know when you get a little bit older you're not looked upon as being eligible for that list. I know that I'm not on and never have been on any of the court appointed lists.

Interviewer II: That was my next question.

Mason: Not because I did not want to do so. It's just that they never asked me. I was court-appointed to a case by Conway Shield on a question of a writ of habeas corpus and I had been in Newport News about six weeks, I think the judge wanted to give me a difficult task. Perhaps some of you know Reno Harp. We formed a friendship because I went up to Richmond and I interviewed my client and frankly, thought he had a pretty damn good case. And went up to Richmond, interviewed the client came back and had about a four or five hour hearing before Conway Shields. And Judge Shields was getting ready to rule from the bench and I insisted that I wanted an opportunity to file a brief in the matter. I think laughingly, Reno Harp almost died. He couldn't believe that on such a thing a brief would even be asked for. I filed a brief. Reno filed a counter brief. The issue was resolved against my client but Judge Shields has never appointed me to any other cases. Anyway, the point is that I have just not been one who was asked to get on those lists.

Interviewer II: Are you a member of any minority bars?

Mason: No.

Interviewer II: No.

Mason: Not, not unless that includes the Newport News Bar Association, Virginia Bar Association, the Virginia State Bar and the American Bar Association are the only..... I have formerly been a member of the Norfolk-Portsmouth Bar Association while I was practicing there. But those are the only Bar Associations of which I've been a member.

Interviewer I: ...... Could you describe the nature of your membership with the James River Country Club and what you understand to be the rules regarding membership with that Association or Country Club?

Mason: Sure. In ...... thirteen years ago, whenever that was, I was asked and I think by my then employee, Billy Cowardin, if I wanted to join a country club. I lived in a place called Village Green. I had children and was swimming competitively. I was delighted to join as a member of that club. For seventeen years, I have nothing bad to say about any individual member of that club. I found it to be pleasant. I've found what I've read in the papers from allegations that implied that anybody would sneak down into the locker room and go through some kind of skullduggery solely for the purpose of taking advantage of others to be laughable. Come on, I'm not a golfer. My sole use of the club was about twice a year to play tennis. The other use of the club was go along Friday nights and have a couple drinks and sit and eat. I have never been a member of any committee there. I've never participated in any elite organizational qualities of the club until six months ago, I have never sponsored anybody for membership and then I joined in sponsoring my good and dear friend of about ten years named Ashton Clarke and his wife. So that even if somebody foresees my membership as having some kind of implied negative quality I cannot say that I've ever perceived it that way. Now in answers to your question about what was my understanding of the membership.

Interviewer I: Let me ask you one other thing. When I say the nature of your membership, did they have categories. Are you like a full member? Or active? Inactive? Do the categories of membership, it takes so much to be this? So much to be that? Or you're just a full member and that's it?

Mason: Dennis, I'm giving you my understanding. Number one, I am a Class A member.

Interviewer I: Ok.

Mason: I was a Class A member. It's my understanding that's a family membership, everybody in your family is a member.

Interviewer I: All right.

Mason: They then have other memberships, I believe, if you're a single person. They have women female memberships, I am told.

Interviewer I: Ok, that answers that. The next question, the next part of that is what do you understand to be the rules about membership?

Mason: My understanding is that you apply for membership, and I assume it's still the same now as it was seventeen years ago, in which two people sponsor you. You are as far as I know admitted by virtue of some kind of committee vote or something. Whatever it is, Billy Cowardin asked me and I submitted the thing, and about a month or so later he said Mason, you're a member. Does that answer your question about how you become a member?

Interviewer I: Yeah, and then later on as I understood six months ago you decided to sponsor someone for membership. Is that right? You said your good friend, whoever.

Mason: Dennis, the answer to that question is yes, but I don't think it's been six months. It might have been a year.

Interviewer I: You see as I take it at whatever point that was you have a better sense of what the membership requirements were. You at least knew that it required a sponsorship?

Mason: Oh, I knew that it required a sponsorship seventeen years before, because Billy Cowardin - the two people who sponsored me, although Billy Cowardin, my steady employee, later my law partner and continually my friend was the guy who had the idea, but he was not one of the people who sponsored me.

Interviewer I: Right.

Mason: Now, when it was a year ago Ashton and Julie Clark are dear friends of ours. Julie Clark and my wife play tennis together twice a week, and my wife came home and in essence said Ashton and Julie would like to join to the club. Would you sponsor them? I said sure I would. So, I was one of two sponsors for them, the only people I've ever sponsored.

Interviewer I: Ok, I know at this point you're aware of the press account, the varying accounts that suggest that the club discriminates against blacks, Jews and women are not - to a certain extent - and that they have a non-voting status. I guess my first question in that regard would be how do you comment regarding that? As I understand it, there are no blacks, who are members of the club. Secondly, there are no Jews or maybe one or two Jews, Jewish people, but neither of which is practicing at that, and women have a non-voting status. First of all, do you understand those things as best you know to be true? That there are no black members of the club, first of all. That secondly, there are no Jewish members of the club and that thirdly, that the women who are members of the club are not allowed to vote.

Mason: The first two things I will speak on. The third thing about women who are members whether or not they're allowed to vote, I have no idea.

Interviewer I: Ok.

Mason: It's not something I know.

Interviewer I: Sure.

Mason: As to the first section.....

Interviewer I: All right.

Mason: I would be a fool to think that there are black members of that club. If so, they never attend, because I've never seen them there.

Interviewer I: All right.

Mason: Number two, I have no knowledge of how many Jews, if any or whether they are practicing or not. In order to prepare and gain knowledge for, not this meeting we're having here today, but for the larger picture..........

Interviewer I: Right.

Mason: I have contacted the country club, I have been by the country club - I have spoken to the manager and I have spoken to the gentleman who is the secretary, I believe. He has advised me that we do have Jewish members and he does not know how many.

Interviewer I: All right.

Mason: I am certain, in my own knowledge that it's relatively few. Whether or not they are practicing Jews (I'm not so sure I know what a practicing Jew is), but whether or not they are practicing Jews, I cannot answer you.

Interviewer I: Ok.

Mason: If the question you have, is is there some form of implied exclusion of those two categories blacks and Jews, I would tend to think that the mere existence of the people moving in and about the club would prove the black thing. What it would prove about Jews I cannot say because I am not able to say who is a Jew when I see one.

Interviewer I: Ok, well help me a little bit when you say the mere existence of people moving in or about the club?

Mason: Yes, when I go to the club and see no blacks there, at the pool there as members sitting down eating.

Interviewer I: Right.

Mason: You know, you have to be rather unobservant not to recognize that there are no black members.

Interviewer I: Ok, so then, I guess is, what follows from that is that the press accounts that there's an un-written rule with regard to the exclusion of blacks...... there are blacks.... to your knowledge is there such a rule? If not, how do you account for the fact that there are no blacks who are either members or your understanding have not been extended an invitation to participate.

Mason: I understand your question. The point is about an unwritten rule.

Interviewer I: Right.

Mason: I can merely tell you that I have been told that no black has ever submitted an application.

Interviewer I: Ok.

Mason: However, you must understand that no black can submit an invitation an application.... without being sponsored by, as I understand it, two club members.

Interviewer I: Right.

Mason: So that whether or not this values or thing that constitutes the unwritten rule I cannot answer your question. I know of no such unwritten rule. I just want to tell you I have never participated in any kind of activities, especially saying is there an unwritten rule, why don't we have any blacks? It just was not a part of any discussion I had there at that club.

Interviewer I: Ok.

Mason: I'd like to add something.

Interviewer I: Sure.

Mason: Within the past year or so and before my name ever came up the second time for a federal judgeship. I have informally sat with colleagues and have expressed the view that, gee, we ought to open up this damn club. Let me tell you why. I personally feel that it would enrich the club but more importantly, it would expand the membership, it would generate more money and would also mean that the club is not going to be subject to the criticism which it has now been and will continue to be. You see to me, it's wise to open it up to take the heat off of it so that other people can enjoy it and have a good time with it.

Interviewer I: And the response was what?

Mason: You have to understand I am talking to friends and we're just sitting around. This is not a public discussion.

Interviewer I: Sure.

Mason: And their response was the same. You're now talking about talking about close friends damn it. You're not talking about crusaders. You're not talking about people saying hey, that's a grand idea, let's go out and do something. I'm just talking about shooting the breeze among friends with whom you had a long and warm relationship.

Interviewer I: Ok. With that in mind, I guess, one of the

things that are important as far as we're concerned to judgeship and a judicial candidacy of the people to view a judge is that the appearance of fairness exist and I guess I'd like to hear you respond. What would you say, Ok, let's say that they, the blacks, appearing, might appear before you having the knowledge that you maintain the membership the next seventeen years in a club that on its face appeared to exclude blacks. What could you say to me that would make me feel better about coming before you, at least give me some sense that despite those things this man might be fair.

Mason: When you say blacks, are you referring to you and lawyers ?

Interviewer I: Well, I guess I'll say parties before the court. Parties before the court.

Mason: All right. Number one, I had been roaming around this Peninsula for twenty years and I would hope that the life which I have tried to live would by those who know me would frankly preclude the possibility that anybody saying Skip Mason regardless or what your color is or what your background is, what your inheritance is. That Skip Mason's an unfair guy. I believe I've earned that. And I believe people think of me as being fair, open, communicative. Now I cannot transpose myself out there to someone who is standing before me and saying Mason just because you've been a member of this country club you are presumed to be an unfair guy. If someone wants to draw that conclusion Dennis, I can't argue against that. I can only tell you check around, check around.

Interviewer I: Ok, what about the Hampton Roads Assembly? First of all what is that, as best you know?

Mason: I can tell you what that is.

Interviewer I: Ok.

Mason: About twenty-years ago, when my wife and I came to this Peninsula very anxious to make friends, somewhere along the line there was a thing that was called the Cotillion. Ever heard about that?

Interviewer II: Yes.

Mason: Ok.

Interviewer II: It's like a debutante ball.

Mason: Yeah, it was made up of young people and again as far as I know everybody in that room was white. I don't know if they were Jewish or what but there are and we joined in it. It seem to have two, three functions a year. One night dance. As we got older, that group was no longer interesting to us and there's another group that does exactly the same thing called the Hampton Roads Assembly. And someone of whom I have no idea said would you like and your wife like to join that. Frankly, they didn't say it to me it comes through my wife. She's the one who knows people. I do not know if I've been a member of that organization for five years, eight years, I do not know. But it has two or three functions a year. The sole purpose of which is to get together about six or six-thirty, have two or three drinks followed by dinner and then a band, and as you get older, with a group like that long.by 10:30 the whole thing folds and everybody goes home. Where as with the Cotillion, that was not true, it lasted till way early in the morning. You know, youth is a wonderful thing. But that's what it is. It's a group that has three functions a year and I believe that's three.

Interviewer: (Question not recorded)

Mason: They have it at different places. Their Christmas dance, I believe historically,has been at the James River Country Club. That is a white-tie, you know, tuxedo type thing. The other two dances, one has been in Hampton, one in Williamsburg, and the one in the spring is generally not even coat and tie it might be just a casual type dress. [That's all it is. It does not, to my knowledge, have any kind of....] Incidently, I understand now that it's broken up fifty-fifty. That for each person who is a member from Newport News, there must be one from Hampton. I do not know, I do remember the membership is in my name. I do not know if they have members other than people like me.

Interviewer I: Do you still maintain your membership with Hampton Roads Assembly?

Mason: No, with neither one of those.

Interviewer I: When did you resign each one and why?

Mason: There were two different things, two different dates. I'd like to answer why because it applied to both of them.

Interviewer I: All right.

Mason: Cannon two as you know the federal Cannon of Ethics for judges. I forget the buzz language. But whatever it is, there has been an interpretation under there that says anybody who is a member of...Judges should not be a members of clubs who practice "invidious discrimination." I think it has a comma behind there somewhere. However, it should be left to the individual attitude of the judge to make that decision. When my name came up in November, I knew then, that I would have to get out of these clubs, if my name went forward. You must understand my name went forward two and half years ago and I got my neck cut-off. So that when I recognized that my name was viable and that I was gonna quit these clubs, when I made the decision, I went to talk to Paul Trible about it and Trible was in Russia. I had already, Dennis, it was after my name came out in the White House late February, early March. I just do not know when. After talking with Sen. Trible and telling him what my judgment was, he of course said, I think that's what you should do. I immediately sent a letter to the James River Country Club. When I came up to Washington to be before the Senate Committee, I had ignored, I had forgotten, what I perceived to be a nothing organization namely the dance group whatever its called, the Hampton Roads Assembly and when I got up there and talked to Senator Trible, all of this had been disclosed as you well know, to the Senate and everybody, the ABA. I said [quoted] "Oh My God, I forgot it" and I immediately made a telephone call to my office, from Washington and told my secretary to please call Bob Williams, who went to law school with me and is secretary or whatever it is of this dance group - to tell Bob the letter's on the way but get my name out of there. I just don't look upon the James River Country Club as an image out there that you go and sit down and have lunch. The Hampton Roads Assembly isn't. Therefore, I attended the place and still place nothing on it. And being a little bit humorous and I hope you will accept it, the pleasure that I got from the James River Country Club far exceeded for me and my family that which I could ever get from about ten hours a year at the Hampton Roads Assembly.

Interviewer II: Would you have resigned from the Country Club, had your name not gone through?

Mason: No. It was a thing of personal achievement and satisfaction to me. I went over there, I had had the comfort of having my - some of my kids participate in a swimming and athletic program over there. I found going over on Friday nights sitting among colleagues and having a couple of drinks and shooting the breeze and getting something to eat and going. I found it pretty satisfying. These are friends of fifteen and twenty years standing.

Interviewer II: I can't argue but why didn't you go and meet them at some local restaurant.

Mason: I understand that argument, I'm just telling you that from those who perceive that membership to be evil by itself, I cannot say that. I do not believe that I have been evil or unfair, meaning by being a member there, and I would not have quit it. I do not look upon myself as having carried some moral cause by virtue of being a member. And I did so because not because I want to be a federal judge that I'm giving something away in order to get. I'm saying that once my name has gone forward and I look at those Cannons of judicial ethics then I say all right, that's the price I have to pay. Not because its gonna get me the judgeship.

Interviewer I: Well, let me ask you a question?

Mason: Sure.

Interviewer I: [__________] as to the propriety of correctness of the type of judicial ethics that we're talking about keeping in mind the affect of the American Bar Association, I think that was the organization that indicated the code of judicial ethics as a federal position and you're aware that the government's position as stated of course, I believe and also the position of some cf the key members of the General Assembly of Virginia. All of which indicate to me that there is a big feeling that a person who is a candidate for judicial position should not be affiliated with organizations which actually on its face discriminate because of race, religion, sex so forth. As I understand it this is a philosophical position of these groups, persons, or individuals that the reason for that is that it is wrong for a person who is swearing to a public position to have membership in these organizations and that it is more than merely leaving the organization but a matter of how you feel about the particular questions. Do you feel that it is not proper for such a person to hold membership or do you feel that a person should just leave if he decides to become a judge. Do you feel that, in other words, do you agree with the American Bar Association's Cannon of ethics. Answer this question generally. Or is this simply a specific thing that you say I've gotta do before I want to be considered for this judgeship?

Mason: Sir, number one, (I think I understand your question) Number one, I agree that a judge elevated to the federal judgeship [because I only get off in that same way that Governor Baliles has come out and made some statements because you know was triggered because of the interest of it being applied to me.] I believe that I as a federal judge should not be a member of such an organization. And that is why I got it. I think that the federal judiciary should be perceived as being fair and that's the illustration of it. You know, I'm getting out these things. If you don't think that way then it means that seventeen years ago, when I walked through the doors of the James River Country Club the first time that I was tainted. I was then labelled forever philosophically as being unfair, prejudiced and it ain't so. But I would think rather than having to argue in the streets and have support from my friends who think that I'm not prejudiced. I would rather resign from the club and say that I will not continue to participate in such an organization that is perceived by some to be an act of invidious discrimination. I agree with the idea, I agree that judges should not be members of those.

Interviewer I: Let me give you a hypothetical question?

Mason: All right.

Interviewer I: Suppose someone else today was a nominee and you were a member of the Bar in the city and in this district and that person were a member of the James River Country Club. Do you feel that in those circumstances it would be your position that, that person, it would be improper for that person to continue to be a member of the James River Country Club?

Mason: I thought I had answered. Are you talking about somebody who is aspiring to any kind of judgeship?

Interviewer I: .... to the .....

Mason: ..... same job I was ......

Interviewer I: .... aspiring to?

Mason: Yes, I believe that the intent of the American Bar Association in talking about this puts the burden on the judicial candidate. Saying you made the judgement, judge but if you are wise you will recognize that some could perceive your continued membership as being ...... of rendering your objectivity you know, qualified. So rather than have anybody who would suggest that, Skip Mason got out, I would think anybody else with similar thoughts would get out. I think its the thing to do.

Interviewer I: Do you believe the club's policy, let's put it this way, merely, the club discriminated against blacks. Its policy.

Mason: It's membership policy?

Interviewer I: Yeah.

Mason: Sure.

Interviewer I: Let me ask you this. Is the problem there .....

Mason: I say sure because there are not any there.

Interviewer I: Sure, that's right, that's right.

Mason: I've answered that.

Interviewer I: If you make that conclusion then it would seem to me that not withstanding the federal judgeship the question is whether nominated to a judgeship or not, do I wanna belong to this kind of association. What I hear you saying is Yes, I wanna belong, Ok, but if I'm considered for judgeship and the Cannon prohibits such a thing then I'll get out. The problem is when do we form the notion that said that participation in the club that has these kinds of policies is wrong and what do we do about it notwithstanding the fact that we're considered for a federal judgeship?

Mason: Number one, I think that this is probably the point in which, philosophically, we disagree.

Interviewer I: All right.

Mason: And let me try to expand upon that.

Interviewer I: All right.

Mason: In joining such a club, I had no idea and care not otherwise to discriminate. I wanted to get in and enjoy the privileges that me and my family could have at that club.

Interviewer I: Right.

Mason: By the same token, as a private citizen, if I am a crusader either in my church or in my university or whatever it is that I feel I should bring that moral shape to bear. Then one of course can do that, they can give of themselves.

Interviewer I: Right.

Mason: I never took the position that there is any kind of moral fire within my belly to go out and correct what is perceived to be wrong by some. Ok. Now I just want you to understand that I believe that Skip Mason as an individual has tried to prove himself over the weeks, months and years of my life as being a square guy and the mere fact that I joined that club, I would hope, that, standing alone would not be the persuasive force that washed out this other twenty-five years of my relationship with my fellow man. And you're making the argument, the one that I mentioned earlier that once you walk through the door, you're tainted and then if at any time it came to your attention there were no blacks, no Jews there you had some kind of moral duty to then get out rather than continue with what a private club itself as an individual right of we Americans to be members of individual organizations. And I think probably, Dennis that is getting close to where you and I philosophically, intuitively may disagree.

Interviewer II: Did you ever feel that there was some sort of contradiction in your trying to be a fair person, to deal with your fellow man in the fair and equitable manner but then have this membership over here as you said that may be perceived by some as not being fair and equitable to all people of the community. Did you ever think that there was a contradiction in there that you were trying on the one hand to build this image and then tearing it down on the other hand by belonging to this organization?

Mason: No.

Interviewer II: No.

Mason: And the reason I'm mad and I just want to emphasize that I never looked upon myself as participating in an affirmative act of downgrading anybody. I looked upon myself as trying to provide by virtue of my hard work and my success some of the creature comforts that was available to me and I could provide to my family. I just was not building a wall to keep anybody out, I was trying to get in and share what they had to offer and this is a philosophical difference that maybe I and Jews and blacks and whoever else it is who may not be members of those clubs; we would have some kind of fundamental difference.

Interviewer II: When you said "perceived to be wrong by some," does that, to me that, I guess I [----] perceived by some you know that's a small part of the community or it's not really important or it's not a big factor to be considered that. You know, I got the impression you're choosing your words very carefully and that you know, that phrase "perceived by some to be wrong" was really a way of saying well, you know, some people, you know, who maybe over here separate and apart they really don't deal with them, they really don't matter that much, may have, may have this perception, you know. But it really isn't a factor that brought to bear that really made a significant impression on your feelings about the whole situation.

Mason: Number one, I didn't think that I was selectively choosing words, I think that this thing that we've often talked about, this perception. I'm saying that if..... I had ever heard of or participated in anything that we got over in the car and said (tell you know what, we ought a, we would) we should die before we let any this or that group into this club, then I would feel terrible and I would have felt that I was then actively doing something that I felt morally wrong. But merely to participate at the level I did to enjoy, I just, I must honestly say I don't look upon myself or those who are of the right mind as having done something that is morally wrong.

Interviewer II: Ok.

Mason: And I, again we may disagree on that, I'm just saying to you that it was never my intent to go there to discriminate, it was my intent to go there and enjoy. And I cannot be critical of those who are members of that, if they have the same attitude that I have. Now there are some over there and I'm sure there are, who would absolutely die, rather than having a black or a Jew or whatever else it is in the club. Then I feel sorry for those people, I can't help that. Now, I just, those are not the type of people that I enjoy the company of.

Interviewer II: Do you think that by your membership those types of people feel that you are lending your credibility and your prestige to their philosophy by virtue of your membership?

Mason: No.

Interviewer II: No.

Mason: I haven't thought of it that way but, I would also say that they are probably the people who are, I think that Skip Mason was a son-of-a-bitch for getting out. You know, I really undermine the whole program by virtue of my position there and those type of people I can never convince one way or the other.

Interviewer II: I don't have any other questions, do either of you?

Mason: No.

Interviewer I: (reporter missed question)

Mason: Well, I'm delighted, I want to say something Dennis, I don't, I didn't know you. You got good reviews. I called Judge Spencer and he spoke very well of you. I called a Judge whom I did not know, Tim Ellis and I, gathered that you at least knew him. And frankly, I was calling him as a good lawyer trying to obtain the background information. I knew these [tape is blank at this point] and those two gentlemen spoke very well of you and if I was you I'd be very proud of that because they are just super guys. I only speak for Jim Spencer, I don't know the other one. Anything else?

Interviewer I: No. Not unless you have a statement or anything you'd like to make.

Interviewer II: You have any questions for us?

Mason: No, well, I do have a question but it's not about this, number one, not, not about what we've just said, I would like to underline my feelings that I don't know of anyone who could come forward and say with an affirmative showing that hey Skip Mason is a, a guy who doesn't call it straight, that he has this feeling about blacks and he doesn't like foreigners or whatever, cause its just not true. And the only thing that I have heard that apparently has marshalled some interest is this membership in a Country Club and that membership, I feel I was not participating in anything which was "anti" anything. If there are people who disagree with me then, I accept the way the world

is. I believe that the great bulk of the people who are there in these clubs, are not there with the idea of gathering together and scheming against anybody, they're there for basically the same reason I was for rest, relaxation and enjoyment.

Interviewer I: Now, you want to go off the tape?

Mason: No, go ahead.

Interviewer I: Let me put it on.

Mason: Dennis, I assume that you are serving as Chairman.

Interviewer I: That's correct.

Mason: You've indicated that your group is gonna be meeting at [_____] next week?

Interviewer I: That's correct.

Mason: I would like to know what type or rather when a response is suppose to be forthcoming, and let me tell you why. I feel as if I have spent about the past three and a half maybe four years seeking such a job. I believe that my rating by the ABA, my FBI check has tended to clear me. I believe that what I read in the papers are that having been submitted by a Republican

Senator to a Republican President and the, Democratic aspects of the United States Senate and an election in November. You're putting all those things together that I am conscious of time. I am, I was told that possibly at the end of this month, there would be another meeting of the committee. The next committee meeting, I assume will be the committee meeting before Senate Judiciary Committee. I believe would be in mid-June. And my question to you is a very frank one. When I leave here, I'm going to go and call Washington and tell the Senator, Senator I did, this, that and the other and I'd like you to do everything humanly possible to jam this thing on that committee docket because it's political and that's your daily work.

Interviewer I: Right.

Mason: My question to you is simply this, when is the word going to Washington from this group?

Interviewer I: Well, I'm not trying to be [_____] to put you off, but quite frankly, I don't know. Ah, it could go as early as

this weekend. Alright, beyond that I'm just not sure. As best I can tell you is what I said at the beginning and that is that in all likeliness we will meet with the executive committee Friday, Friday night, Saturday. Then they'll make a decision as to what they want to do and it's, a much larger group and that's what my

-- if it were a smaller group, I'd have less reservation about saying these things are going to happen but it's a little bit larger so I can't, I really can't make any commitments beyond the fact that we're gonna take it this weekend. We, the other thing that I might add is that we too, are well aware of the time constraints involved so it's not something that's lost on us. We're aware of that. Now, [_____] quite natural to try to fit within the time constraints as we understand it. So we're aware of that the best I can say to you is that we'll take it to them and we'll just have to kind of have to see what they want to do.

Mason: Well, let me ask if it's called a favor, I will label it a favor. In an environment, in Washington, there are interesting dialogues going up there and as best as I understand it Senator Metzenbaum has said to your President and your President sent to you and I assume you have Senator Metzenbaum's letter. I would assume that you would be reporting back to either Senator Metzenbaum, in fact this fellow's name you know I've got a copy of that letter. The fellow's name is Steve Metalitz. Do you recall the name?

Interviewer I: Yeah, I think he's, I forget what he is.

Mason: He's a lawyer who works for the Democratic side of the Senate Judiciary Committee, so that frankly, he's probably the one who knows more about it and will get better action on it.

All I would like to do is to encourage you to get it up there as soon as possible.

Interviewer I: Well, there is a, you know, there's also a very practical reason for our desire to get it there as soon as we possible can because whatever conclusion is reached quite naturally, we'd like for that to be given some consideration and so it would behoove us. As I say we, I understand your part, but we've got our own interest for wanting to get it up there whatever it is as soon as we can.

Mason: My second.

Interviewer I: At least a little bit.

Mason: My second.

Interviewer II: You're looking at the week, this coming weekend, there's, there's a meeting, state-wide meeting because otherwise, we'd have to call, probably would have to call the session meeting of the Executive Committee [__________].

Mason: I prefer you do that.

Interviewer II: and get everybody there, ha! ha!

Mason: I prefer you get on the telephone and do that.

Interviewer II: Ha! ha!

Interviewer II: No, no you wouldn't.

Interviewer II: No, you wouldn't, no, no, no.

Mason: My next question is will I be made privy to what the position of the Old Dominion Bar is?

Interviewer II: Yes, you will.

Mason: All right, how?

Interviewer II: Generally, we would forward to you a copy of whatever letter is sent.

Mason: That's fine.

Interviewer II: Ok.

Mason: All right.

Interviewer II: All right.

P. O. Box 161
White Marsh, Va. 23183
June 7, 1988

Oscar Blayton, Esq.
2 Eaton St., Suite 708
Hampton, Va. 23669

Dear Oscar:

This will confirm that I did send a letter to Shannon T. Mason, then president of the Newport News Bar Assn. on November 30, 1981, protesting the location of the Bar Assn. Christmas party at the James River Country Club.

If I can be of further assistance, please let me know.

Sincerely,

Ronnie Cohen

RECEIVED

HILTON LAW OFFICE
10219 WARWICK BLVD.
NEWPORT NEWS, VA 23601
(804) 599-0011

TO Oscar Blayton
702 Eaton Street
Hampton, Virginia 23669

DATE June 7, 1988

SUBJECT

Dear Oscar:

Enclosed is a copy of the letter that Ronnie and I sent to Shannon Mason in November, 1981 regarding our objection to the James River Country Club. At that time my legal name was Judith Anne Bennett. I did sign and mail the original.

Sincerely,

Judy Kline
Judith A. Kline

JAK/clj
Encl.

Item # MLSN72 The Drawing Board, Dallas, Texas 75266-0429
© Wheeler Group, Inc., 1982

FOLD AT (-) TO FIT DRAWING BOARD ENVELOPE • EW10P

BENNETT & COHEN, INC.
ATTORNEYS AT LAW
POST OFFICE BOX 6246
NEWPORT NEWS, VIRGINIA 23606

301 HIDEN BOULEVARD

JUDITH A. BENNETT
RONNIE COHEN

TELEPHONE
[illegible]

November 30, 1981

Shannon T. Mason, Jr., President
Newport News Bar Association
693 J. Clyde Morris Blvd.
Newport News, Virginia 23601

Dear Skip:

As new members of the Newport News legal community, we are anxious to develop professional relationships with our colleagues. The Bar Association provides us with an opportunity to get to know other lawyers in a non-adversarial atmosphere. The Winter Dance, being the Association's major social function, is of particular value to us in this respect. It is, therefore, unfortunate that the dance is held in a facility with a reputation for having an exclusionary membership policy.

The location of the dance presents us with a personal dilemma, in that we wish to participate in this social funtion but object to the Association's support of an organization which would not welcome us as members. Also, we believe that the Bar Association, in its community leadership role should be sensitive to this kind of issue.

We are planning to attend the dance, but our personal beliefs require this quiet protest. We would be happy to work with other members next year to investigate alternate facilities.

Sincerely,

Judith A. Bennett

Ronnie Cohen

Virginia State Conference

N A A C P

P.O. Box 27212 • 112 East Clay Street • Richmond, Virginia 23261
804/644-5678

Atty. Charles M. L. Mangum
President
Lynchburg, VA

Ms. Cynthia Downs
Vice President
Newport News, VA

Ms. Jacquelyn Bailey-Kidd
Treasurer
Richmond, VA

Ms. Linda Byrd-Harden
Executive Secretary
Richmond, VA

Atty. S. W. Tucker
General Counsel
Richmond, VA

April 26, 1988

Mr. Steve Metality
Senate Judiciary Committee
Dirksen Senate Building
Washington, D. C. 20510

Dear Mr. Metality:

This letter is in reference to the Virginia State Conference of NAACP Branches' and the Newport News Branch's opposition to Mr. Shannon Mason's candidacy for the appointment to the Federal Bench in the Eastern Distict of Virginia.

Through his membership in a racially exclusive club, Mr. Mason has demonstrated a lack of sensitivity and a lack of perception that is necessary for a judicial candidate.

The judicial system, as well as any repository of public trust, must not only be fair, but must also be perceived as being fair. This maintenance of the perception of fairness is the "higher standard" to which we must hold our public institutions if we are to have a truly democratic society. And in order for these institutions to be perceived as being fair, the principal decision makers within those institutions must also be perceived as being fair.

Individuals are, in part, measured by their associations freely made. This is to say that an individual who joins a motorcycle gang is perceived in a certain light; an individual who joins a public service organization is seen in another light and one who joins a racially exclusive club is seen in yet another light.

It can not be denied that the policy makers of the James River Country Club wish to exclude Blacks, Jews and women (in a certain sense) from their process of association. This club allows participation to individuals based on certain measures of merit. In other words, no one is asked to join, as a full voting member, unless he is considered to be deserving of membership. By making this process inaccessible to Blacks, Jews, and women (to a certain extent) those individuals who make the policy for the James River Country Club assert the proposition that no matter how scholarly, no matter how great one's contribution to society, no matter what the content of one's character;

if an individual is Black, Jewish or a woman, he or she could never DESERVE to fully associate with white Christian males. This is a racist and sexist process of association, and those individuals who promote and adhere to the notion that such a criterion for association is beneficial are bigots.

Mr. Mason freely and willingly joined, and over a period of years, maintained his membership in the James River Country Club. Mr. Mason freely, knowingly and willingly associated with bigots while simultaneously putting himself forward as one who would be perceived as a fair decision maker in all areas of the law, (including civil rights). For this reason, we would say that he should not become a Federal Judge.

There are those who say that our position is unfair, now that Mr. Mason has stated his intent to resign from the club. To this we must respond that Mr. Mason has known for some years that he has wanted to be appointed to the Federal Bench. He has also known that maintaining membership in an organization, such as the James River Country Club, which practices individual discrimination is unacceptable behavior for an aspirant to the Federal Bench. And, we truly question whether he would have left the club absent a challenge on the issue. Finally, he should not have needed to be challenged on the issue before he resigned.

Our legal system, as well as our national sense of fairness are constantly evolving; and it is important that our judges and judical candidates (no matter how well liked) be as fully evolved socially as the laws and the society which they are trusted to protect. For these reasons, we ask that you not consider Mr. Shannon Mason for the Federal Bench in the Eastern District of Virginia.

Yours truly,

Linda Byrd-Harden

Linda Byrd-Harden
Executive Secretary

LBH/mse
CC: Mr. Oscar H. Blayton, President
Newport News Branch NAACP

Atty. Charles Mangum, President
Virginia State Conference NAACP

Senator Paul Trible
U. S. Senator

Senator John W. Warner
U. S. Senator

NAACP to fight nominee

NORFOLK (AP) — The membership in an all-white country club of a Newport News lawyer nominated to the federal bench has surprised political observers and raised the ire of the state unit of the National Association for the Advancement of Colored People.

Shannon T. Mason was recommended to the White House late last year by Sen. Paul S. Trible Jr., R-Va., to fill the vacancy on the bench of the Eastern District. The post has been open since the March 1986 death of U.S. District Judge D. Dortch Warriner.

The state NAACP said Thursday it would oppose Mason's nomination before the Senate because of his membership in the James River Country Club. The club has not had a black member in its 65-year history.

John Miller, a Trible spokesman, said the matter of club memberships was not part of the discussion between Mason and the senator that led to Trible submitting Mason's name to the White House for nomination to the bench.

Mason is the fourth name submitted by Trible for the post. He originally was passed over when Trible submitted the names of E.D. Davis of Newport News, Deronda M. Short of Newport News and Alvin P. Anderson of Williamsburg. Trible told the White House that Davis was his first choice.

When the White House failed to forward his name to the Senate, Davis asked that it be withdrawn in early 1987. Late last year, Trible said the White House asked for another name and he gave them Mason.

He denied that Mason was passed over the first time because of conflicts between the attorney and Sen. John W. Warner, R-Va.

Mason has said that his membership in the club had no bearing on his ability as a potential federal judge.

The state NAACP took the opposite stand.

"I don't think that is an appropriate position for any candidate to hold," NAACP Executive Director Linda Harden said of Mason's club membership. She said the state group would battle Mason's confirmation with the same intensity it used to help defeat the nomination of Judge Robert Bork to the Supreme Court.

Senator METZENBAUM. I may have a few other questions for you, but first let us hear from Senator Thurmond.

Senator THURMOND. How are you?

Mr. BLAYTON. Fine, Senator.

Senator THURMOND. Do you know Mr. Mason well?

Mr. BLAYTON. Do I know him well?

Senator THURMOND. Yes.

Mr. BLAYTON. I know him, Senator, and I interact with him professionally. When you say "well," that is a matter of degree. I have known him for a number of years. I have attended some functions of the Federal bar organization in which he is fairly active.

Senator THURMOND. Are you a lawyer?

Mr. BLAYTON. Yes, sir, I am a practicing attorney.

Senator THURMOND. Are you opposing his nomination?

Mr. BLAYTON. Yes, sir, I am.

Senator THURMOND. On behalf of yourself or some group, or what?

Mr. BLAYTON. On behalf of the Newport News Branch of the NAACP and on behalf of myself, yes.

Senator THURMOND. What reason are you giving for opposing him?

Mr. BLAYTON. Well, I am sure the Chairman would not care to have me read my statement again, so I will try to capsulize.

Senator THURMOND. Do not go into a lot of detail; just tell me in a few words.

Mr. BLAYTON. I won't. I'll be as brief as I can. Mr. Senator, the judicial system is a repository of public trust. People must believe in that system.

Senator THURMOND. You do not have to go into all that; we know that.

Mr. BLAYTON. Okay.

Senator THURMOND. I asked you the specific question of why are you opposing him.

Mr. BLAYTON. Because I do not believe Mr. Mason will be perceived as being a fair judge if he is appointed.

Senator THURMOND. Why?

Mr. BLAYTON. Because Mr. Mason, in my opinion, had to be forced to resign from a club which excludes blacks and Jews and women to a certain degree from full membership.

Senator THURMOND. Who forced him to resign?

Mr. BLAYTON. I believe public pressure and his perception that he would not be appointed to the judgeship if he, in fact, did not resign.

Senator THURMOND. Is that the reason you are opposing him, because he was a member of the James River Country Club?

Mr. BLAYTON. I believe it is inappropriate for any judge or candidate for judgeship to belong to an organization that invidiously discriminates based on race, religion, or sex, yes, sir.

Senator THURMOND. And you are opposing him for that reason?

Mr. BLAYTON. Yes, sir.

Senator THURMOND. Now, since he has resigned, does that relieve the situation?

Mr. BLAYTON. No, sir, it does not, because he should have known before that he should not have held himself out as being a person in whom we could place public trust and at the same time belong to an organization that did not feel that people by virtue of their race or their religion should not be allowed to associate with other people.

Senator THURMOND. He is not a member of the club now?

Mr. BLAYTON. My understanding is that he has resigned. That is my understanding.

Senator THURMOND. Well, we have had a good many people nominated for judges that were members of certain clubs, and although they did not feel that—even Justice Kennedy who was put on the Supreme Court was a member of a club, and he did not feel it was necessary to resign, but to relieve any question about it, well, he did resign.

Well, as I understand it, this man has done the same thing in order to relieve any objection from that standpoint. Not that they did anything wrong by belonging to it, but they just resigned so it would relieve any possible perception that some people may have had.

Mr. BLAYTON. Is this a question, Senator?

Senator THURMOND. There are no restrictive covenants on the James River Club, are there?

Mr. BLAYTON. When you say restrictive covenants, do you mean in terms of membership or what?

Senator THURMOND. The club does not prohibit a person joining of another color, do they?

Mr. BLAYTON. It is my understanding, Mr. Senator, that the club does prohibit the joining of blacks and Jews to a great extent, yes, sir, not in any written form, but members of the club have admitted to the press, which has been reported——

Senator THURMOND. Well, that is your understanding. What evidence do you have of that?

Mr. BLAYTON. Do you want direct evidence or——

Senator THURMOND. Well, in other words, do they have any rules that prohibit anybody joining except white people?

Mr. BLAYTON. Senator Thurmond, now——

Senator THURMOND. You just answer what I asked you.

Mr. BLAYTON. I'm going to try to answer it as best as I can, Senator.

Senator THURMOND. Are there any written rules that say that a black person——

Mr. BLAYTON. Senator, I have never seen their written rules, so I can't answer that question.

Senator THURMOND. Well, let me ask you the question; you wait now.

Are there any written rules that say a person cannot belong to the club because they are black, or no blacks have applied or no blacks have been admitted? I am just trying to get the facts.

Mr. BLAYTON. There are rules written not on paper, but in practice.

Senator THURMOND. There are what?

Mr. BLAYTON. There are rules written not on paper, but in practice.

Senator THURMOND. So there are no written rules on it?

Mr. BLAYTON. There are written rules in practice, yes.

Senator THURMOND. And your opinion is that they practice that, in fact. That is your opinion, is that right?

Mr. BLAYTON. I am here to give my opinion, Senator, yes.

Senator THURMOND. Well, here is a man that is recommended by both U.S. Senators. He comes highly recommended by other groups, lawyers and others, and you are trying to keep him now from being a judge because he belongs to a club from which he has resigned? Is that true?

Mr. BLAYTON. That is not accurate.

Senator THURMOND. Well, what is not accurate?

Mr. BLAYTON. If I may explain, I do not believe he should be appointed to a judgeship because he did not have the sensitivity or the perceptiveness necessary to be perceived as being a fair person on the bench, and that is manifested by his membership in the club and his reluctance to resign from the club once he knew that such membership was inappropriate.

Senator THURMOND. Does he have a good reputation as a lawyer?

Mr. BLAYTON. I am not as familiar with his reputation as a lawyer. I have——

Senator THURMOND. Well, you are a member of the bar down there. You ought to know whether he has a good reputation or not among the lawyers.

Mr. BLAYTON. I have not heard individuals talk about whether Shannon Mason is or is not a good lawyer. I have involved with him and I can say I have not found him lacking or deficient as a lawyer, but there is a difference between being a lawyer and being a judge.

Senator THURMOND. Do you know anything against his character or integrity?

Mr. BLAYTON. In terms of his character, I believe he belonged to a club that practiced invidious discrimination. I think that is reflective of his character.

Senator THURMOND. In other words, that is the only thing against his character is belonging to a club there that does not have any members except white people, is that it?

Mr. BLAYTON. Well, no, that is not the only thing. At issue here is knowing that certain behavior is inappropriate, but yet adhering to that behavior.

Senator THURMOND. I do not think I have any further questions, Mr. Chairman.

Senator METZENBAUM. As I understand it, your testimony also was that the club also does not admit Jews, nor women, to your knowledge?

Mr. BLAYTON. Women not to voting membership. That is my understanding. Women may be members, but they may not vote. And with regard to Jews, my understanding is that there is one individual who was born Jewish but does not practice his religion, as I understand it, and is a member.

Senator METZENBAUM. On that score, I might just put into the record a quotation from one of these articles. "The club has had token Jewish members in the past, but the general perception of the Jewish community is that it is a discriminatory club and Jews are not welcome," said Norman Olshansky, Executive Director of the Peninsula's United Jewish Community Center.

Senator Simon.

Senator **Simon**. Mr. Chairman, just one comment. What we have done in the past when people have resigned, is we have then okayed them. There is one area, however, that is still unclear and I wrote a letter to the American Bar Association asking them to clarify it.

You will recall we had one nominee who belonged to a social organization of approximately 40,000 members that had no black membership and I asked for clarification from the American Bar Association on their code of ethics. The response from the American Bar Association has been less than satisfactory. I think that we ought to get some clarification from them.

I have no questions of the witness here. There is no question you are showing some courage and I appreciate that. I think that what we have done in requiring nominees to resign is in line with the code of ethics and I think it is proper.

Senator **Metzenbaum**. I want to say that this Senator has some real concerns about whether you can take a person who has been a member of a discriminatory club for many years of his life—I am not now addressing myself to this particular applicant for confirmation—and whether you can say, well, by resigning he somehow purges that lifetime or that long period of participation in a discriminatory club.

It seems to me that the ABA statement on this subject and the U.S. Judicial Conference statement on this subject should be interpreted to say something more than that a nominee when he or she knows that they are to be nominated can resign and somehow therefore purge the record, and that suddenly that person who might not be confirmed because of the membership is now okay for confirmation.

My own view is that if it was not okay and that individual did not see fit to resign—and that includes Judge Kennedy, you mentioned Judge Kennedy—long before he or she was up for confirmation, I believe this Committee ought to give some consideration to the question of whether or not the applicant is an appropriate nominee for the federal bench.

And I say that because I think the thrust should be not the matter of achieving the great victory and getting the individual to resign from a particular discriminatory club. Rather, we should send a message to all lawyers that it is time for them to speak up in their clubs, to speak out, and to indicate to those clubs that still have discriminatory policies against blacks and women and Jews that it is time to change those rules.

I recollect when I in my private life brought suit against a public body for leasing out its property to two private golf clubs that discriminated, and I won the suit and the leases were terminated.

But I think that I want to say to everyone within range of my voice what I am saying here today is that I expect to raise this issue in a much stronger voice in the future and try to prevail upon this committee to recognize that we should not confirm if the individual had not resigned or seen fit to raise the issue in his club. I do not think the individual has to actually resign.

I think if the individual has the courage of his or her convictions and raises the issue at the board of directors and makes a point of it and says I felt I ought to fight from within in order to change the rules, I would say that would be enough. That would be at least significant.

But I think that the idea of mere resignation 1 day, 1 week, 3 weeks before we hold a hearing is not going to be enough for this Senator and I am going to attempt to prevail upon this committee to take more firm action. Hopefully then the word will be out to some of the clubs around the country and some of the lawyers around the country that if they ever hope to get confirmed that they ought to be raising the issue in their clubs.

Senator THURMOND. Mr. Chairman, as I understand it, Mr. Mason testified there are Jews in the club.

Senator METZENBAUM. No. I think he said that he thinks there are Jews in the club, and the record seems to indicate further evidence that there is one member of the Jewish faith in the club, but he is not a practicing Jew.

I think that if Mr. Mason wants to submit some factual data in connection with that, certainly we will keep the record open for him to do so. I think that is a fact that either is or is not.

Senator THURMOND. And there is no evidence that he has opposed any black member who has applied, is there?

Senator METZENBAUM. No, there is no evidence that he has taken any action that he is opposed or raised the issue, and he is not different, I must say, than some other nominees who have come before this committee and who have resigned, knowing that they were to be up for confirmation.

Senator THURMOND. As I understand it, he has been a member of that club for 17 years. Only in the last year or two has the ABA gone into the question of invidious discrimination, and they have considered him and given him a well qualified report.

Senator METZENBAUM. I think the ABA's action was taken in 1984, Senator.

Senator THURMOND. That is right.

Senator METZENBAUM. That is about 4 years.

Senator THURMOND. Well, they have considered that. They have considered it since 1984 and this man here, they have just investigated him and they gave him a well qualified report, not just qualified, but well qualified.

Senator METZENBAUM. Well, I do not think anybody questions his legal abilities. This man was on a list of three that was submitted to the White House 2 years ago, as I understand it, and he knew he was up for consideration at that time.

I think it might have very well sent a message to him and caused him to reexamine his own thinking process and his own conduct in view of that.

Senator THURMOND. Well, if they do not have any rules excluding blacks or Jews, why is he being held responsible now? As I understand it, there is no evidence that any blacks have been turned down. There is no evidence that any Jews have been turned down. Why do they want to take it out on this man now?

Senator METZENBAUM. Well, I think it is a fact that it has been an accepted fact in that community—and this has been reported in the public press—that the club has never had a black member in its 56-year history and some club members, speaking on condition of anonymity, acknowledge that there is an unwritten rule against sponsoring black and Jewish members. That is from the——

Senator **Thurmond**. Are you going to go on an unwritten rule? Are you going to go on perception or are you going to go on the facts? The facts show no black man has been turned down. The facts show no Jews have been turned down, and so it is purely perception you are going on.

Senator **Metzenbaum**. I want to say to my colleague——

Senator **Thurmond**. I think it will be very unjust if you turn this man down. The ABA has approved him with a "well qualified," and he has a fine reputation in the community as a good lawyer and there is no single item that he has worked against or discriminated against anybody.

I do not believe in discrimination. At the same time, you have got to be fair. It is just like these charges against Ed Meese now, all kinds of perceptions. Put your finger on something definite. That is what you have got to do; you have got to be fair.

This is a country in which people have a right to trial by jury. This is a country in which people have rights to protect themselves.

Senator **Metzenbaum**. I want to say to my colleague that I do not need to have discrimination spelled out for me.

Senator **Thurmond**. I would like to ask one more question.

Senator **Metzenbaum**. I know it when I see it and I do not need to have it written out in a written document. As a member of a minority, I have seen it in many instances in my own lifetime, and it was not because it was written in black and white; it was because it was a reality.

So I would say to you that I think the only valid point that I see that can be made is if we permitted Judge Kennedy and others to resign, is it fair to stop this man under similar circumstances.

It is for that reason that I made the statement that I believe that it is not enough to permit an applicant to resign. I believe that in the future I am going to look to see what action, if any, he or she took while they were a member of a discriminatory club.

Senator **Thurmond**. I want to ask Mr. Blayton this question. Do you feel down in your heart that Mr. Mason is a racist?

Mr. **Blayton**. Senator Thurmond, that is a very complex question and I will try to answer that as briefly as I can. Racism is a process. It is a process based on a notion of race superiority coupled with another concept of meritocracy. An individual cannot be a racist. An individual can be a bigot, but racism is an activity or process or an assumption.

So to answer your question, no, I do not believe Mr. Mason or any other individual is a racist, because racism is a process not a person.

Senator **Thurmond**. I just believe in being fair, that is all.

Mr. **Blayton**. I am sure you do, Senator.

Senator **Thurmond**. In fact, in the last few years this question has just come up about these social clubs. I remember we had an Attorney General that was up a few years ago and he was a member of some clubs and he saw no need to resign, but he just did it in order to relieve any possible perception and he resigned, the same circumstances exactly in which Mr. Mason is confronted here, the same circumstances exactly when Judge Kennedy was considered here.

There at least ought to be some notice by this committee or be some action taken and put people on notice if they are going to do it, and not just apply something here all of a sudden that has not been followed in the past.

Here is a man of character, a man of ability recommended by the American Bar Association. Are you a member of the American Bar Association?

Mr. BLAYTON. I have been up until this last year. I have been a member since, I believe, 1978 until 1987, I think.

Senator THURMOND. Well, that is considered a good organization, is it not?

Mr. BLAYTON. Yes.

Senator THURMOND. Well, they gave him a well qualified record.

Mr. BLAYTON. Did the American Bar Association—were they apprised of his membership in the James River Country Club and the nature of that club when they gave the recommendation?

Senator THURMOND. Well, I presume they investigated it. They always investigate very carefully. I just believe in being fair, that is all.

Mr. BLAYTON. I understand that, Senator.

Senator THURMOND. If there is going to be any change in the rules, then it ought to be applied in the future and put people on notice.

Mr. BLAYTON. The ABA guidelines have been there for 4 years, and I do believe that we should be fair and I think that we should also be perceived as being fair. And I do not think that this man would be perceived as being a fair judge. If we are to be fair, Senator, I think we should, in fact, be fair in fact and in perception.

Senator THURMOND. Well, perception is one thing and reality is another. That is what I was trying to explain. People have all kinds of perceptions, but unless there is a reality there, well, then, should you deprive a man of an appointment by the President of the United States, where the FBI has investigated, the American Bar Association has investigated? The lawyers are for him; he has good standing at the bar, a well qualified record.

That is all, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Mr. Blayton.

Mr. BLAYTON. Thank you.

Senator METZENBAUM. Our next and last witness is Grace Flores-Hughes. Would you come forward, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. FLORES-HUGHES. I do.

Senator METZENBAUM. Please be seated. Would you like to introduce members of your family?

TESTIMONY OF GRACE FLORES-HUGHES, WASHINGTON, DC, TO BE DIRECTOR, COMMUNITY RELATIONS SERVICE, U.S. DEPARTMENT OF JUSTICE

Ms. FLORES-HUGHES. Yes, Mr. Chairman. I would like to introduce my husband, Lieutenant General Harley Hughes, from Oklahoma. He is a recently retired general from the U.S. Air Force, a Vietnam veteran and a former fighter pilot, and my best friend.

Senator METZENBAUM. Very good. We are happy to have you and him with us.

Ms. FLORES-HUGHES. Thank you.

Senator METZENBAUM. Ms. Flores-Hughes, you have been nominated to be the Director of the Community Relations Service of the Department of Justice. Since 1965, the Community Relations Service has had the responsibility to assist communities in preventing and resolving community conflicts involving racial and ethnic minorities.

More recently in 1983, the Community Relations Service was assigned the responsibility to care for and process Cuban and Haitian persons who have been paroled from Federal detention facilities. Those are important responsibilities. The 1980 appropriation for these activities was $27 million.

I understand that when you spent some time with our committee staff, you told our staff of your efforts to familiarize yourself with the responsibilities and problems of the Community Relations Service.

What are the priorities of the Service and what do you consider to be the most significant problems you will face if you are confirmed?

Ms. FLORES-HUGHES. Did you ask what are the priorities of the Service?

Senator METZENBAUM. Yes.

Ms. FLORES-HUGHES. Was that the first question?

Senator METZENBAUM. Yes.

Ms. FLORES-HUGHES. I would say everything that we do—both CRS I and CRS II are both just as important as the other. So I can't say one is more important. I say both of them are just as important and I would pay attention to both of them equally.

Senator METZENBAUM. I am not sure I followed you.

Ms. FLORES-HUGHES. Well, when you asked me what are the priorities, I say both of them are because CRS I is the one that settles domestic disputes and CRS II is the one that works with the——.

Senator METZENBAUM. I am having difficulty in understanding you. Would you just speak a little louder and a little slower?

Ms. FLORES-HUGHES. Okay. What I said is that I would place priority in both programs, which is CRS I—CRS I addresses local disputes when we work with local police departments, and CRS II works with the Cuban-Haitian program. So I find both of them just as important as the other.

Senator METZENBAUM. In 1983, the Community Relations Service was assigned the responsibility, as I previously stated, to care for and process Cuban and Haitian persons. How do you view your responsibilities in that respect?

Ms. FLORES-HUGHES. With the Cuban-Haitian program, I plan to—I have been briefed, obviously, on the program. I need to know more about the procedures that are being used right now to release some of the detainees and look at what it is that we are doing with, and if not, why not, with the Haitian population.

Senator METZENBAUM. Let me ask you if you can tell us in your own words what your past professional experiences are or what your past community activities are that, in your opinion, would qualify you to be head of the Community Relations Service.

Ms. **Flores-Hughes**. I have approximately 20 years of Federal service. I have worked—most of my career at the Department of Health, Education and Welfare where I worked in an office called the Office of Hispanic-Surnamed Americans.

We had an office for Asian, blacks and women. We all worked together very closely to set policy, to ensure that all these groups received adequate and fair service from the department.

I have been at the Small Business Administration for 2 years as a special assistant, and former Senator Abdnor recently appointed me as the Acting Associate Administrator for the Minority Small Business Program, otherwise known as the 8(a) program.

Senator **Metzenbaum**. What has been your involvement in activities with the black community?

Ms. **Flores-Hughes**. With black groups or black——.

Senator **Metzenbaum**. The black community.

Ms. **Flores-Hughes**. With the black community in terms of mostly my work, my professional work when I was, as I said, at the Department of Health, Education and Welfare, and right now as the head of the Minority Small Business Program, I deal with black business people everyday.

Senator **Metzenbaum**. And what percentage of the small business loans have gone through the Office of Minority Small Business and Capital Ownership Development?

Ms. **Flores-Hughes**. I don't have anything to do with loans. We have to do with certifying minority small businesses.

Senator **Metzenbaum**. You have to do with what?

Ms. **Flores-Hughes**. We certify minority small businesses into the 8(a) program. I don't have anything to do with loans.

Senator **Metzenbaum**. The committee received an anonymous memo which, among other things, alleges that many Community Relations Service staff persons are demoralized as a result of the actions of certain administrative personnel. Judiciary Committee staff has made this memo available to you.

The fact sheet makes certain allegations which, if true, and I do not know that they are, are very serious and damaging to the mission of the Community Relations Service. Will you assure the committee that if you are confirmed, the allegations contained in the report will be investigated and resolved promptly?

Ms. **Flores-Hughes**. Okay. For one thing, I don't have access to any documentation regarding what you said. I believe you said that I had—I have never seen any documentation. And when I do receive that documentation, I will review that and absolutely make that my priority to ensure that everybody is treated fairly in that office and that that, in fact, is not occurring. If it is occurring, once I review the facts, I will take action immediately to eliminate that.

Senator **Metzenbaum**. Will you further assure us that you will report to the committee on your findings as to those allegations and on the action you have taken to resolve any problems no later than 6 months after your confirmation?

Ms. **Flores-Hughes**. Yes, Mr. Chairman, I will.

Senator **Metzenbaum**. Let me ask you, you were sitting here present when we had before us the issue of the confirmation of an individual who wishes to be a Federal judge. That is indeed a community relations issue, although it is only fair to say that certainly the Community Relations Service does not get involved in the judicial confirmation process.

But the issue does not involve any particular individual. But as one up for confirmation to be head of the Community Relations Service, would you give me your personal reaction to the resignation of an individual from a club that has, at least on its face, been a discriminatory club for a period of many years and that he or she has not taken any action to do anything about it?

Senator THURMOND. Mr. Chairman, I think that question is probably out of order because you are asking her to express an opinion on something in which you have a definite fixation and which the committee will have to act on.

In other words, you are asking her to express her opinion on the nomination just before her.

Senator METZENBAUM. No, no, I am not asking her to express an opinion.

Senator THURMOND. I understand what you asked, and you can have the reporter read the question back. In other words, you want her to pass on the issue that has been raised about this other judge.

Senator METZENBAUM. Well, I think it is an issue that has to do with the——

Senator THURMOND. Why do you not ask her a question of whether she believes in any discrimination of any kind or something of that sort, because when you ask that other question, her answer will probably be concerning the judge that we just heard?

Senator METZENBAUM. Well, first, I will say to the witness, if you care to answer, you may, and if you want to decline, you may. Then I will have additional questions.

Senator THURMOND. I think the question is improper in view of the questions that you have just asked the previous candidate for a judgeship and you want her to express her opinion on it.

Senator METZENBAUM. Well, I am asking her to express her opinion as the person who is up for confirmation of the Community Relations Service. She is not up to be confirmed as the SBA head or as the Office of Technology Assessment head. She is up to be the head of that one particular department in government that has to do with community relations. Community relations does have to do with minority discrimination.

Ms. Flores-Hughes, your choice, answer or not. I will not push you if you do not want to answer.

Ms. FLORES-HUGHES. Well, Mr. Chairman, I can answer it only in terms of myself and I can only tell you I don't belong to a club of that nature. That is all I can say.

Senator THURMOND. We cannot hear you, please.

Ms. FLORES-HUGHES. I said the only thing I can do is respond in terms of myself and tell you that I don't belong to any clubs of that nature, and that is how I prefer to respond to that question.

Senator METZENBAUM. Let me ask you this. Do you feel that clubs that discriminate contribute to community tensions, community racial and religious tensions?

Ms. **Flores-Hughes**. Clubs in general or private clubs, I don't think—any club like that, I don't think—I don't know of any clubs because I don't belong to any that discriminate and they should not. We are all Americans and we should all be treated the same.

Senator **Metzenbaum**. Do you think that clubs that do discriminate contribute to community racial and religious tension?

Ms. **Flores-Hughes**. I have never known of such a situation except for the one that happened, I believe, in Maryland, and I don't know whether it was due to membership, whether it was more of a situation with a worker and a manager.

But I don't know of any that have occurred because of membership.

Senator **Metzenbaum**. Well, my staff advises me that CRS is currently looking into racially-related remarks that have been made in Howard County, Maryland, and certainly that will be on your plate, on your agenda.

Ms. **Flores-Hughes**. That is right.

Senator **Metzenbaum**. Let me ask you this more broad question. The field of community relations calls for dealing with that which might at times be considered very sensitive issues. It deals with more than knowing blacks, more than knowing Hispanics, more than being a woman, knowing women.

It deals sometimes with having the courage of your convictions to move in and take such action as is called for, even though in some instances it may be very unpopular locally or even nationally.

Tell us something about yourself that you feel can reassure us that you can provide that kind of leadership for the CRS.

Ms. **Flores-Hughes**. I can relate my experience as the head of the Minority Small Business Program at SBA right now because I have to make some very, very tough, sometimes controversial management decisions.

I have to be substantively acquainted with the case and make decisions based on that, not on anything else, and also based on rules and regulations. And I'm quick to make decisions, but I'm quick to make them based on the knowledge and the research that me and my staff have put into the case.

Senator **Metzenbaum**. I am somewhat perplexed, I must confess, that I do not see any of those groups normally concerned about community relations present either supporting your nomination or opposing it.

There is somebody who just raised his hand. For whom do you speak, sir?

Mr. **Sepulveda**. I am with the Southern California Hispanic Business Association.

Senator **Metzenbaum**. The what?

Mr. **Sepulveda**. The Southern California Hispanic Business Association.

Ms. **Flores-Hughes**. Let me also answer part of that. That is Manuel Sepulveda from California.

For one thing, I did not invite anyone here with me today, but I have received a number of letters from various ethnic groups throughout the country. Your staff received those letters of support.

Senator **Metzenbaum**. It is my understanding that there are approximately six letters, mainly from Hispanic organizations. Is that correct?

Ms. **Flores-Hughes**. There are a couple of Asian groups, also, and——

Senator **Metzenbaum**. Any black groups?

Ms. **Flores-Hughes**. From one in Georgia.

Senator **Metzenbaum**. One in Georgia?

Ms. **Flores-Hughes**. Yes, sir.

Senator **Metzenbaum**. What is the name of that group?

Ms. **Flores-Hughes**. That is a Methodist church group.

Senator **Metzenbaum**. And from any of the Jewish community relations groups?

Ms. **Flores-Hughes**. No.

Senator **Metzenbaum**. I may want to continue this hearing. I want to explore this situation. It just seems to me to be so unusual that for this sensitive position we have not heard from any of the so-called community relations groups. I do not want to delay your nomination unnecessarily, but I think I do want to explore that situation.

Senator Thurmond.

Senator **Thurmond**. Well, Mr. Chairman, if they are opposed to her, they ought to be here.

I would like to ask this gentleman back here, would you stand up for a minute? Do you oppose this lady?

Mr. **Sepulveda**. No, I do not, sir.

Senator **Thurmond**. Are you in favor of her?

Mr. **Sepulveda**. Yes, sir.

Senator **Thurmond**. Have a seat. [Laughter].

Mr. Chairman, this nomination has been before this committee since last December.

Senator **Metzenbaum**. Well, I am not looking to delay this lady unnecessarily.

Senator **Thurmond**. Well, that is what it looks like, a delay. Why not finish it up here? It has been here since December. This is May.

Senator **Metzenbaum**. Let us not, you and I, get into a confrontational situation.

Senator **Thurmond**. Well, I am sick and tired of these nominations being delayed.

Senator **Metzenbaum**. Well, I have not been——

Senator **Thurmond**. Senator Biden told me he would give every nominee for a judgeship a chance to be voted on by this committee, and it is not being done. I want to tell the public it is not being done.

Senator **Metzenbaum**. Well, Senator Thurmond, I want to say to you that we had a number of judges up for confirmation this past week and we did not have enough members on your side of the aisle in order to make a quorum. We were ready to vote them out.

So when I hear about delay, I have to say where were those on the other side of the aisle? Why did you not show up?

Senator **Thurmond**. There were no judges on that agenda at that time, no judges on that agenda.

Senator METZENBAUM. Well, there were U.S. Attorneys on it. Does that mean that you only want to come——

Senator THURMOND. No U.S. Attorneys were on it.

Senator METZENBAUM. Does that mean you only want to come to meetings when there are?

Senator THURMOND. I was tied up in Armed Services. We were preparing the annual report for the Senate on armed services and I could not be here. But I was told there were no judges and no U.S. attorneys on it. Now, you are making a statement without foundation.

Senator METZENBAUM. Well, I know this: Senator Leahy is in charge of this matter. Senator Leahy feels very strongly that he has been moving forward with the whole matter of judicial nominations.

This is actually not a judicial nomination. We are trying to move forward as promptly as possible. Nobody wants to delay this woman's confirmation, and I assure you that we will be moving forward without delay.

You and I get along very well. Let us just calm the waters and we will——

Senator THURMOND. Well, I want to say this. You are talking discrimination against Jews. Mr. Bernard Siegan, a Jew, has been up before this committee for confirmation for more than a year. Why do you not give him a vote?

Senator METZENBAUM. Well, I am not really in charge of that, but I will explore the subject for you.

Senator THURMOND. Well, he is entitled to a vote.

Senator METZENBAUM. My guess is it does not have anything to do with his faith.

Senator Simon.

Senator SIMON. Yes, just one question of the witness. Frankly, because the Justice Department has been so insensitive in this whole area, I am concerned about where we are going.

Your appointment is somewhat unusual in that it is a 4-year appointment. I do not want to delay this and I see nothing negative in your background at all, but simply because there is this insensitivity on the part of the Justice Department at this point, I look at any nominees in this area with some caution.

Would you be willing to say that if you were approved, would you within 6 months of a new administration make a pro forma submission of resignation? It would be up to the President or the Attorney General at that point to approve you or not approve you.

In fact, under the law, the President has the authority to remove you from office anyway. Would you be willing to, within 6 months, make a submission of resignation so that the new Attorney General and President would have the authority to review without any difficulties?

Senator THURMOND. Mr. Chairman, they can do that if they want to, but it seems to me that might be an unfair question. Why should she do it? There other people that are appointed here that go beyond January 1 when you have a new President. Why should she be singled out and called upon to make such a statement?

Senator SIMON. Well, because we are not talking about a Federal judgeship here. We are talking about a sensitive position with the

Department of Justice, and a sensitive position that is going to carry on into the new administration.

And I think the witness understands why this might be a desirable thing and I would like to hear her answer.

Ms. FLORES-HUGHES. If that is a practice that all commission people do, I have no problems doing it. But if I'm going to—am I the only one who would be doing it from the other commissioners? I mean, we have so many boards and commissions throughout—there are appointments for 6 or 9 years.

I know the FBI Director, for example, I believe, is for 9 years. If all of us are supposed to do that, absolutely, but if I'm going to be singled out, why single Grace Flores-Hughes out versus a commissioner or an FBI Director? I don't understand.

Senator SIMON. Well, I guess my answer is that I would for any sensitive position at this point ask the same question and make the same request of anyone. You reflect upon it, and as you reflect upon it, if you can let me know, I would appreciate it.

Ms. FLORES-HUGHES. I can say to you that if I thought I had to resign if I'm doing a good job, I'd have to think twice. I can see myself and if I felt that I was not doing a good job, then probably I would.

Senator SIMON. There is one difference, also. You mentioned the FBI Director. The FBI really is independent. In a very different way, you are part of an administration in the Community Relations Service there.

Ms. FLORES-HUGHES. I don't understand. How is he independent? He reports to the Attorney General just like I do.

Senator SIMON. The FBI, by tradition, has been an extremely independent body, and should remain so.

Ms. FLORES-HUGHES. And I'm not trying to compare myself to him. I just cited that as an example, but I guess I don't see the difference.

Senator SIMON. I am not pressing for an answer here now.

Ms. FLORES-HUGHES. That is fine.

Senator SIMON. And you reflect on it, see what you think, and then let me know. Again, it grows out of the fact that there are real concerns about the lack of sensitivity on the part of the Justice Department at the present time.

Thank you, Mr. Chairman.

Senator THURMOND. Mr. Chairman, I am wondering whether it is real sensitivity there or whether he is hoping that a Democrat will be elected President and then he can appoint somebody.

Senator SIMON. No, I am not——

Senator METZENBAUM. I think he was hoping that a particular Democrat——

[Laughter.]

Senator SIMON. At one point, that was the case.

Senator THURMOND. Well, if he was President, it might be a different situation.

Senator SIMON. It has nothing to do with party politics. I would ask the same if George Bush was elected President. The question would apply no matter which party came into power.

Senator THURMOND. Now, I want to remind the committee that this lady is of Hispanic descent. She belongs to the minorities. Is it going to be discrimination not to act on her nomination when it has been here since last December?

Senator **Metzenbaum**. I want to say to my colleague that there has been no indication that there is any intent to hold up her nomination. I am presiding over a hearing to inquire of her so that we can move her nomination forward.

In the interim, I have inquired of my staff and have been told that some of the community relations organizations, the national ones that quite often come before this committee and other committees, have indicated that they do not intend to appear either for or against Ms. Flores-Hughes' confirmation.

Under those circumstances, then, I would see no particular reason to conduct any further hearing. But, certainly, I want to make it very clear I have no thought in my mind of holding up your nomination.

I have been assigned to conduct this hearing. I am conducting it the way I think it should be conducted, and I would guess that we will move forward in the Judiciary Committee at a rather early date.

Thank you very much.

Ms. **Flores-Hughes**. Thank you.

Senator **Thurmond**. Now, I would like for this letter to go in the record and I would like to read it. To Senator Simpson, "Dear Senator Simpson, thank you for writing to Senator Biden regarding the nomination of Grace Hughes to be Director of the Community Relations Service. In his absence, I wanted to confirm the agreement that has been reached on this nomination."

"A hearing on Ms. Hughes' nomination will be held on April 28. The nomination will then be ready to be placed on the committee's agenda for its May 12 business meeting. I hope this information is helpful."

This is a letter to Senator Simpson signed by Diana Huffman, Staff Director of the Judiciary Committee, and representing, of course, the Chairman, Senator Biden.

Senator **Metzenbaum**. Well, I am not aware of that letter. I am glad to hear that the staff has set it out as to what we are to do. That always pleases me a lot. I have always thought the staff really runs the Senate more than do the Senators.

But having said that, we will be very happy to proceed forward with your nomination. We appreciate your coming before us and we are happy to welcome your husband, who is in attendance with you and has certainly been a great American in his own right.

Ms. **Flores-Hughes**. Thank you, Mr. Chairman.

[Whereupon, at 12:20 p.m., the committee was adjourned.]

JOHN C. LIFLAND

Birth:	July 13, 1933	Jersey City, New Jersey
Legal Residence:	New Jersey	
Marital Status:	Married	Jean Duncan Gracie 3 children
Education:	1950 - 1954	Yale University B.A. degree
	1954 - 1957	Harvard Law School LL.B. degree
Bar:	1957	New Jersey
Military Service:	Jan-July, 1958	United States Army
Experience:	1957 - 1958	I. Charles Lifland, Esq. Law Clerk
	1958 - 1959	I. Charles Lifland, Esq. Associate
	1959 - 1961	Law Secretary to Hon. Thomas F. Meaney, U. S. District Court District of New Jersey
	1961 - present	Stryker, Tams & Dill Associate (1961-1965) Partner (1965-pres)
	1968 - 1977	New Jersey State Board of Bar Examiners Member
Office:	33 Washington Street Newark, New Jersey 07102 201 624-9300	
Home:	116 Beekman Road Summit, New Jersey 07901	

To be United States District Judge for the District of New Jersey

JOHN C. LIFLAND

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

    John C. Lifland

2. Address: List current place of residence and office address(es).

    Home - 116 Beekman Road, Summit, NJ 07901

    Office - 33 Washington Street, Newark, NJ 07102

3. Date and place of birth.

    July 13, 1933, Jersey City, NJ

4. Marital Status (include maiden name of wife, or husband's name) List spouse's occupation, employer's name and business address(es).

    Married to Jean Duncan Gracie; she is employed at L'Ambiance, Inc., 380 Springfield Avenue, Summit, New Jersey 07901

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

    Yale University, September 1950 - June 1954, Bachelor of Arts June 1954

    Harvard Law School, September 1954 - June 1957, L.L.B. June 1957

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From	To	Name of Employer and Supervisor	Address (Where employed)
6/54	8/54	J.I. Kislak Inc.	32 Journal Sq. Jersey City, NJ
7/55	8/55	Law office of I. Charles Lifland	921 Bergen Ave. Jersey City, NJ
7/56	8/56	Law office of I. Charles Lifland	921 Bergen Ave. Jersey City, NJ
7/57	1/58	Law office of I. Charles Lifland	921 Bergen Ave. Jersey City, NJ
1/58	7/58	U.S. Army	Ft. Dix, NJ
8/58	9/59	Law office of I. Charles Lifland	921 Bergen Ave. Jersey City, NJ
9/59	7/61	United States Government-Judiciary - Hon. Thomas F. Meaney, U.S. District Judge (deceased)	U.S. Court House Newark, NJ 07101
7/61	Present	Stryker, Tams & Dill	33 Washington St. Newark, NJ 07102

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

> Yes. I was a member of the United States Army Reserve/New Jersey National Guard from approximately October 1957 to October 1965. I was on active duty at Fort Dix, New Jersey from January 1958 to July 1958. Thereafter I went to Officer Candidate School and was commissioned. I was honorably discharged as a First Lieutenant. My serial number was 0-2302168.

8. Honors and Awards: List any scholarships, fellowships honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I was elected a New Jersey Fellow of the American Bar Foundation by the membership thereof; I believe that such election represents recognition by other members of the Bar of my professional achievements and personal dedication to the profession.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association, Antitrust Section, Publications Committee, Books Editor and Co-Editor, Antitrust Law Journal, 1981-1987; American Bar Association, Sections of Legal Education, Corporation and Business Law and Labor & Employment Law; New Jersey State Bar Association; Essex County Bar Association, Nominating Committee, 1978; Association of the Federal Bar, Vice-President 1986-present; American Bar Foundation, Fellow, 1983-Present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I believe that the various bar associations to which I belong may on occasion be active in lobbying before public bodies. I do not believe any other organizations to which I belong (listed below) are active in lobbying.

Clearwater Swim Club (swim club)
Essex Club (luncheon club)
Harvard Law School Association
Summit High School P.T.A.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the

reason for any lapse of membership. Give the same information to administrative bodies which require special admission to practice.

Supreme Court of New Jersey - 1957;
United States District Court
for the District of New Jersey - 1957;
United States Court of Appeals
for the Third Circuit - 1959;
New York Court of Appeals - 1960;
Supreme Court of the United States - 1969

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I edited the Reich, Stack and Zeidman articles in Volume 50, Issue 4 of The Antitrust Law Journal (copy attached), a publication of the Section of Antitrust Law of the American Bar Association.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent; January 7, 1988

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citation for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with

the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically any unsuccessful candidacies for elective public office.

I was appointed to an unexpired term on the Summit Republican City Committee around 1972; I was defeated when I ran for election to a full term on that body around 1973.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Early practice. Immediately after graduation from law school, I commenced working in the law offices of my father, I. Charles Lifland, 921 Bergen Avenue, Jersey City, New Jersey. I practiced in my father's office until January of 1958. I worked on smaller civil matters and did research as required. From January of 1958 until July 1958 I was in military service. I returned to my father's office in July of 1958 and continued to practice there until September of 1959.

Judicial Clerkship. In September of 1959 I became Law Secretary to Judge Thomas F. Meaney of the United States District Court for the District of New Jersey, where I served until July of 1961. In the course of my two-year clerkship I worked on the usual wide variety of civil and criminal cases that came before the District Court. Judge Meaney allowed me the opportunity to be present in court to a greater degree than was normal for law clerks, in order to observe the attorneys at work during trials, hearings and oral arguments. Judge Meaney was helpful to me in pointing out examples of good work by attorneys. Since I had already practiced law for a short time, these comments were particularly helpful to me and added to the learning process of the clerkship.

Labor relations legislation recently passed by Congress generated several interesting cases in that field, and working on those cases during my clerkship caused me to decide to pursue that field of law.

Stryker, Tams & Dill. Since July 5, 1961 I have practiced law with Stryker, Tams & Dill, 33 Washington Street, Newark, New Jersey 07102, telephone (201) 624-9300. My practice is described below.

Directorship. From January 1, 1985 to early 1987 I served on the Board of Directors of Royal Doulton USA Inc., 700 Cottontail Lane, Somerset, New Jersey, (201) 356-7880, a client of my firm for whom I did and do substantial legal work. Royal Doulton USA Inc. is a subsidiary of an English company which manufactures and sells fine china and crystal.

Board of Bar Examiners. I also served on the New Jersey State Board of Bar Examiners from 1968 to 1977, and in that capacity I was paid a salary by the State of New Jersey and carried as an employee of the State of New Jersey. The Board of Bar Examiners was appointed by the Supreme Court of New Jersey and charged with the responsibility of writing and grading two bar examinations per year, as well as supervising the activities of the 21 county Character and Fitness Committees. During my two terms on the Board we considered, evaluated and adopted the Multistate Bar Examination for use in New Jersey, after extensive consideration by the Board and the Supreme Court as to whether a multiple-choice examination could fairly test the criteria relevant to the practice of law. The Board also recommended to the Supreme Court that it replace the 21 county Character and Fitness Committees with one state-wide Committee, in order to assure uniformity. This recommendation was implemented.

I have not been connected with any other offices, companies or governmental agencies.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

When I joined Stryker, Tams & Dill in 1961, my practice was as an associate in a full service business-oriented law firm, with an emphasis on representing management in labor relations matters. From July of 1961 until I became a partner on January 1, 1965, my work consisted of handling smaller matters independently, with only general supervision, and working on larger matters under the supervision of partners. I worked primarily with Walter F. Waldau, who is deceased, and William L. Dill, Jr., who is Of Counsel to my firm. After I became a partner, I continued to work on substantial litigated matters with more senior partners; an example is Levin v. Great Western Sugar Company, et als., class action securities litigation in the United States District Court for the District of New Jersey and the Court of Appeals for the Third Circuit, in which I worked closely with Mr. Dill and counsel for other defendants. That case is more fully described in my response to Question 18 below. Over the years my practice has broadened into general corporate and commercial litigation and counselling, with emphasis on antitrust matters and employment and labor relations matters. My antitrust work commenced around 1970 and has continued to date, with particularly intensive activity during the periods of 1976-1979 (Milco Plastics, Inc. v. Monsanto Company, described in more detail below in my response to Question 18) and 1983-1987 (Synthetic Surfaces, Inc. v. Lord Corporation, also described in more detail below in my response to Question 18).

Over the last seven years I have also developed some expertise in the handling of litigation arising from the construction of industrial projects, representing owners and an engineering and design contractor. These cases were all extraordinarily complex factually. I am presently involved with my partner Richard B. McGlynn in a construction dispute which may result in litigation. The names and other details of the completed construction industry litigations are:

-BASF Wyandotte Corporation v. C.F. Braun & Co., Superior Court of N.J., Middlesex County, Docket No. L-57304-80, was intensively prepared by both parties, substantive motions were briefed and argued, and the case was settled shortly before trial. I represented defendant; my adversary was Richard Eittreim of McCarter & English, 550 Broad Street, Newark, New Jersey, telephone (201) 622-4444;

-Laugro Company, Inc. v. Foster-Wheeler and Mobil Oil Corporation, United States District Court for the District of New Jersey, Civil Action No. 81-2577; I represented the defendant owner, Mobil Oil Corporation; A. Dennis Terrell of Shanley & Fisher, 131 Madison Avenue, Morristown, New Jersey 07960, telephone (201) 285-1000, represented defendant Foster Wheeler, and James Brent Clarke, Jr., Suite 1000, 888 Seventeenth Street, N.W., Washington, D.C. 20006, telephone (202) 466-5500 represented the plaintiff. After extensive preparation for trial, the case was settled shortly before trial;

-The Austin Company v. Kansas Packing Urban Renewal Corporation was a construction

> dispute in which I represented the defendant owner. Litigation was commenced in the United States District Court for the District of New Jersey (Docket No. 83-3236) to compel arbitration of the dispute and the matter proceeded to arbitration before a panel appointed by the American Arbitration Association. The matter was settled after several days of hearing. My adversary was Milton Breitman, 3 ADP Boulevard, Roseland, New Jersey 07068, telephone (201) 992-4400.

In addition to the securities, antitrust and construction litigation mentioned above, I have handled litigation involving bankruptcy, the National Banking Act, insurance coverage, labor relations, ERISA, the Uniform Commercial Code, employment discrimination, business torts, contract and civil rights issues. Some of those litigated matters are described in more detail in my response to Question 18 below. In all of these matters I have been directly involved and directly responsible for and familiar with the legal and factual issues, though often with assistance from associates in my office. In addition, I have been involved in litigation as co-counsel in which patent, trademark and copyright issues were litigated in the United States District Court for the District of New Jersey and in that capacity acquired some familiarity with those specialized areas of law.

Because of my experience in practice before the United States District Court for the District of New Jersey, I have often been asked to act as co-counsel with out-of-state counsel having primary responsibility to their clients for matters pending in that court. In that capacity, my work has varied from merely rendering procedural advice to heavy involvement in the substance of the litigation.

The corporate and commercial litigation aspect of my practice has increased gradually over the years to a point where it now occupies most of my time.

In the mid-1960's, I handled post-conviction relief applications which were assigned to the firm as part of its pro bono commitment. There were few of these cases, since shortly thereafter the State of New Jersey created the Office of the Public Defender, which handled these cases.

Since 1971 I have been counsel to the Substandard Housing and Property Maintenance Board of the City of Summit, New Jersey. In that capacity I am called upon to prosecute violations of the applicable ordinance in the Municipal Court of the City of Summit, and accordingly I appear in that court about six times per year as prosecutor.

I also handled the firm's immigration work for a period of several years during the 1960's.

Currently my litigation matters include defending a corporate client against unfair labor practice charges pending before the National Labor Relations Board, representing a corporate client as plaintiff in commercial litigation pending in the Superior Court of New Jersey, defending commercial litigation pending against a corporate client in the United States District Court for the District of New Jersey, researching and advising on the right of publicity aspect of the right of privacy in courts of the United States for an English commercial client, and representing a corporate owner of office premises in litigation in the Superior Court of New Jersey against the construction manager. In addition, I am presently involved in three cases representing three different individuals in employment claims against their corporate former employers, and am presently counselling a small family-owned service company with respect to a possible merger and with respect to trade secret matters.

With respect to the corporate and commercial litigation part of my practice, the typical clients are large corporations with facilities in New Jersey which generate New Jersey litigation in the federal or state courts, or small to medium-sized companies whose operations are centralized in New Jersey.

In both cases, counselling to avoid litigation, or further litigation, is a part of my practice. With respect to the labor and employment law and antitrust parts of my practice, clients are similar.

Major clients whom I have represented in litigation in the last 10-15 years include: Bankers Trust Company, Amstar Corporation, Royal Doulton USA, Inc., Brunswick Corporation, American International Group, Inc., 3M Corporation, Exxon Corporation, Mobil Oil Corporation, Armstrong World Industries, Pabst Brewing Company, Lord Corporation, First National Bank of Chicago, Hills Bros. Coffee, Inc., Sunshine Biscuits, Inc., Revlon, Inc., Prudential Insurance Company of America, Monsanto Company, Hart, Schaffner & Marx, Inc., Bank of California, Koppers Company, Inc., Dunlop Tire Corporation, C F Braun & Co and International Paper Company. Over the years I have also represented many individuals and small employers in employment matters and individuals and small companies in commercial matters.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently, without regard to the Municipal Court prosecutions referred to above. My regular court appearances include motions, status conferences, case-management conferences, and of course trials and hearings, in the United States District Court and the New Jersey state courts. Over the past five years I have also handled about 10 labor arbitration proceedings to completion; while these are not courts-of-record proceedings, they do involve presentation of witnesses, cross-examination of witnesses, presentation of documentary evidence and oral and written summations, and they always last at least one day and sometimes 2-3 days.

2. What percentage of these appearances was in:

(a) Federal Courts

80%

(b) State courts of record

15%

(c) Other courts

5%

3. What percentage of your litigation was:

(a) Civil

95%

(b) Criminal

5% (Municipal Court)

4. State the number of cases in courts of record your tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Only nineteen of the many cases I have handled in courts of record have been tried to verdict or judgment, not including the Municipal Court matters referred to above. I was sole counsel in 13, Chief counsel in 5 and Associate counsel in 1.

Certainly my own experience over the years supports the general view that only a small percentage of matters in litigation will actually be tried to verdict or judgment.

5. What percentage of these trials was:

(a) Jury

16%

(b) Non-jury

84%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. First National Bank of Chicago v. Jefferson Mortgage Company v. J.I. Kislak Mortgage Company, Inc., 576 F.2d 479 (3d Cir. 1978), was a suit by a buyer of GNMA securities against the issuer/seller of the GNMA securities and a mortgage broker. GNMA securities were new at the time and uncertainties had to be resolved as to the extent to which the need for writings (as was traditional in the real estate and mortgage brokerage industries) could be balanced against the need to trade these new securities verbally (as was traditional in the securities industry). Of particular importance was a legal issue relating to damages under the Uniform Commercial Code: when do you measure the market in awarding damages based on the difference between contract price and market price? Legal scholars had differed sharply on this issue. The Court of Appeals resolved this question as it believed New Jersey would have resolved it, i.e., damages are measured at the time of repudiation rather than at the time due for performance.

   I tried the case in the United States District Court before Judge James A. Coolahan (non-jury), and argued the appeal. I represented First National Bank of Chicago. I was fully involved and in charge at all times; I was assisted by associates in my office from time to time. The Court of Appeals ruled in favor of my client on the damages issues and remanded for assessment of damages; shortly thereafter, the case settled.

Trial took place in mid-1977, as I recall. The appeal was argued on December 9, 1977.

Counsel for Kislak was Richard Plotkin of Pitney, Hardin, Kipp & Szuch, 163 Madison Avenue, Morristown, New Jersey, telephone (201) 267-3333; counsel for Jefferson Mortgage was Donald S. Ryan, 807 Haddon Avenue, Haddonfield, New Jersey 08033, telephone (609) 795-1090.

2. Rothermel v. International Paper Company, 163 N.J. Super. 235, 394 A.2d 860, cert. den. 79 N.J. 487, 401 A.2d 242, was an action by a terminated paper broker against his supplier, my client International Paper Company. The broker sought to hold the supplier responsible in damages for changing its product line and eliminating brokers without several years' advance notice. The significance of the case lies in its expression that good-faith compliance with the brokerage contract's terms cannot be tortious. The case provides useful guidance to the business community and their counsel. I was fully involved and in charge at all times; I was assisted by an associate in my office from time to time. After a jury verdict against my client, the Appellate Division of the Superior Court of New Jersey reversed and ordered judgment for my client. I tried the case in 1977 before The Honorable Murray Simon, Superior Court of New Jersey, Essex County, telephone (201) 621-5413, and the appeal was argued on October 4, 1978. Counsel for plaintiff was Charles E. Church, Esq., 65 Livingston Avenue, Roseland, New Jersey 07068, telephone (201) 994-1100.

3. Rapp v. Dunlop Tire & Rubber Co., United States District Court, District of New Jersey, Docket No. 1275-69, involved secondary-line price discrimination under the Robinson-Patman Act. It arose at a time when the law in the Third Circuit very clearly required a supplier to have extensive knowledge about competitors' pricing before it could claim the benefit of the good faith meeting-competition defense. In the circumstances of this case, this raised problems with Sherman Act proscriptions against price-fixing because such knowledge was not readily available from customers in fully accurate form. The case also involved the question, not clearly answered at the time, of whether credit terms were an element of "price" and therefore covered by the Robinson-Patman Act. On a pre-trial motion Judge Biunno of the United States District Court ruled in my favor, holding that credit terms were not meant to be covered by the Act. Subsequently, other courts have disagreed with Judge Biunno. The significance of the case, which was settled shortly before trial in November, 1975, lay in the need to confront an interface between the Robinson-Patman Act and the Sherman Act, and in the statutory interpretation necessary to confront and resolve the credit terms issue. I represented defendant Dunlop Tire Corporation and was fully involved and in charge at all times. I was assisted by an associate in my office from time to time. Richard D. Catenacci, Esq., Connell, Foley & Geiser, 85 Livingston Avenue, Roseland, New Jersey 07068, telephone (201) 535-0500, represented plaintiff.

4. Milco Plastics Corporation v. Monsanto Company involved allegations of monopolistic conduct against Monsanto, which was a supplier of raw materials to Milco and a Milco competitor as to a certain product line, and a Milco competitor as to a different product line. During a shortage period, Milco's supply of raw materials was cut

back; Milco alleged the cutback was designed to injure it as a competitor in both product lines. The case is particularly significant to me because it raised important antitrust issues, e.g. relevant market definition, shortage conduct, Third Circuit standards for attempted monopolization, and antitrust damages. It was also an intensive preparation and trial experience. I was in charge of the defense on behalf of Monsanto, with assistance from time to time of various associates from my office and from Monsanto's legal personnel. The case was tried before United States District Judge Frederick B. Lacey and a jury, which returned a verdict in favor of Monsanto. The trial began in mid-September of 1979 and ended in early November 1979. Counsel for plaintiff was Michael R. Griffinger, Esq., Gateway I, Newark, New Jersey 07102, telephone (201) 622-2235.

5. Salsitz v. Township of Union was a civil rights and related tort action against the Township of Union and certain of its police officers, commenced in the United States District Court for the District of New Jersey in 1981. (Docket No. 81-1488) I represented the police officers, with assistance from time to time from an associate in my office. The case presented clear factual issues as to whether certain police officers had interfered with the constitutional rights of the plaintiff. It also presented clear legal and factual issues as to the vicarious or direct responsbilities of the municipality under complex factual scenarios, which were fully explored during discovery. I conducted most of the extensive discovery proceedings personally and directed the motion practice on behalf of the police-officer defendants. The case was settled shortly before trial, which had been scheduled before United States District Judge Frederick B. Lacey and a jury; my adversary was Thomas Spies, 5 Becker Farm Road, Roseland, New Jersey 07068, telephone (201) 992-5300, and counsel for the municipality were Henry Larner and Edward Matthews, 150 JFK Parkway,

Short Hills, New Jersey 07078, telephone (201) 379-4800. This case's significance to me, apart from the complex legal and factual issues, lay in the surprising disparity between the testimony of various eyewitnesses to the same conduct.

6. Synthetic Surfaces v. Lord Corporation was a patent infringement, antitrust and RICO case brought against Lord Corporation, whom I represented, in the United States District Court for the District of New Jersey, Docket No. 82-3850. At the outset of the case I was co-counsel for defendant with Edward Goebel, MacDonald, Illig, Jones & Britton, 600 First National Bank Bldg., 717 State Street, Erie, Pennsylvania 16501-1365, telephone (814) 453-7611. I then became chief counsel for non-patent issues. Judge Debevoise handled certain pre-trial matters and the case was then transferred to Judge Bissell. The patent issues (infringement and validity, essentially) were handled by co-counsel, Thomas Sarro and William Jackson of Larson & Taylor, 727 23rd Street, South, Arlington, Virginia, telephone (703) 920-7200. Plaintiff was represented by John N. Bain of Carella, Byrne, Bain & Gilfillan, 6 Becker Farm Road, Roseland, New Jersey 07068, telephone (201) 994-1700. The antitrust issues presented included attempted monopolization, price discrimination, predatory pricing and the accounting and legal definitions and components of fixed and variable cost. The Complaint alleged RICO violations as well; they were dismissed by Judge Bissell upon our motion. I was in charge of the antitrust and RICO aspects of the case, advised patent counsel extensively as to procedural matters, and personally handled most of the antitrust and RICO discovery. I was assisted through the case by Edith K. Payne, one of my partners. The case was significant to me because it presented in a unique way many of the issues normally involved in single-firm conduct which is alleged to violate the antitrust laws.

Had it gone to trial, I believe new law would have been made on the issue of predatory pricing and the components of fixed and variable cost. The case was settled shortly before trial. The case began in November of 1982 and was settled in early 1987.

7. Curtin & Merrell v. BT Credit Company and Bankers Trust Company was a class action suit in the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-2711-72, arising in the early days of bank credit cards. The credit card involved was Bankamericard, now VISA, and was issued by my client, BT Credit Company, an affiliate of Bankers Trust Company. At that time New Jersey banking law permitted a licensed sales finance company to charge 1/4% higher finance charges than a bank could charge; plaintiff alleged that BT Credit Company, which was affiliated with a bank but was also a New Jersey licensed sales finance company, was in reality a bank and sought damages of at least 1/4% of all finance charges levied on members of the class. The case involved serious class action issues under state Rules similar to the Federal Rules, and also dealt with important administrative law issues in the context of the attack on the sales finance company license issued to BT Credit Company by the New Jersey Department of Banking. I represented the defendants, together with New York co-counsel, Mario Diaz-Cruz, 437 Madison Avenue, New York, New York, tlephone (212) 759-9030. The litigation was interrupted by an Order of former Judge Irwin Kimmelman of the Superior Court of New Jersey, Chancery Division, Essex County, transferring the case to the New Jersey Department of Banking for review of the license. After review, the license was upheld and the litigation was dismissed. Plaintiff was represnted by Thomas Demski, 33 Washington Street, Newark, New Jersey 07102, telephone (201) 643-3232.

8. Equico Lessors, Inc. v. Taube, Mechin & Foster, Inc. v. Billings Computer Corporation, et al., Civil Action 82-834, was a diversity action on an equipment lease. Defendant claimed that my client, third-party defendant Billings Computer Corporation, the manufacturer of a computer, was responsible to defendant for lease costs and other damages recovered against it by plaintiff. Article 2 of the New Jersey Uniform Commercial Code and New Jersey products liability law governed in the third-party action. The third-party action was tried before Judge Frederick B. Lacey of the United States District Court, District of New Jersey, without a jury. I handled the trial before Judge Lacey with the assistance of an associate in my office. The trial took several days and resulted in a written opinion and judgment for my client, the third-party defendant. The significant issues were the terms and effectiveness of the warranty ~~and~~ disclaimer and whether the equipment had been improperly modified by an intermediary. I was not involved in the dispute between plaintiff and defendant, which was resolved by summary judgment. My adversary in the third-party action was W. Thomas McDonough, 50 Church Street, Montclair 07042, telephone (201) 744-0136.

9. Fidelis Factors Corp. v. The Prudential Insurance Company of America, United States District Court for the District of New Jersey, Docket No. 543-72, was a suit on a lapsed life insurance policy by an assignee who had not been advised that the policy would soon lapse for non-payment of premiums by the owner of the policy. The case was significant to insurers because of the holding that the assignee could recover the policy proceeds without proof that it would have paid the premiums if notified of the imminent lapse. I tried the case for 2-3 days as sole counsel for Prudential before former United States District Judge H. Curtis Meanor, without a jury. My adversary was Edward

Neagle, now a Judge of the Superior Court of New Jersey, Essex County, 224, Hall of Records, Newark, New Jersey, telephone (201) 621-4789.

10. From July of 1981 until the commencement of trial in 1982, I was intensively involved in preparation for trial of several aspects of Guida v. Threadneedle Insurance Company, et als., Docket No. 80-2780, United States District Court for the District of New Jersey (former Judge Meanor and Judge Debevoise). That litigation involved a suit against certain underwriters at Lloyd's of London and certain insurance brokers upon a fertility insurance policy written on a world-champion standardbred racehorse. I deposed the underwriters and a London insurance broker for ten days and a veterinarian familiar with testicular cancer for three days, and prepared for trial on the issues involved in those depositions. I also worked with expert witnesses (veterinarians) retained by our client in preparation for their depositions. My partner John J. Rizzo prepared for trial on the remaining issues. The case was settled during jury selection before Judge Debevoise. My adversaries included William B. McGuire of Tompkins, McGuire and Wachenfeld, 550 Broad Street, Newark, New Jersey, telephone (201) 622-3000, Anthony Lanzone, Lanzone & Kramer, 26 Broadway, New York, New York 10004, telephone (212) 269-1665, and Henry Morgan, Morgan, Melhuish, Monaghan, Arvidson, Abrutyn & Lisowski, 651 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039, telephone (201) 994-2500. While I was familiar with the insurance issues involved in the case, the veterinary medicine issues were unique, interesting and certainly novel to me, and probably to any lawyer, since this was the only recorded case of this type of testicular cancer in a horse.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The cases described in my response to Question 18 probably incorporate my most significant legal activities, at least in terms of the handling of litigated matters. Other aspects of my legal career which I regard as significant are:

-my service on the New Jersey Board of Bar Examiners for 9 years, by appointment of the Supreme Court of New Jersey. That position involved the tremendous responsibility of writing and grading examinations which would determine who would practice law in New Jersey.

-my work in connection with Project Pass, an effort to assist minority law school graduates in their efforts to pass the New Jersey Bar exam.

-my lectures to professional and non-professional groups as follows:

-New Jersey Institute for Continuing Legal Education, First Annual Forum on Antitrust Law and Practice, June 29, 1985 (see attached program)

-Authorities Association of New Jersey, Annual Meeting presentation on Employment at Will, November 19, 1986 (see attached letter)

-New Jersey State Bar Association Section of Corporation and Business Law meeting, presentation on antitrust law (vertical restraints); see attached program

-Financial Executives Institute, presentation on Employment at Will, 1986

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   The only receipts I anticipate are the payout of my partnership interest in my law firm and ultimate payout of vested pension benefits accrued pursuant to my firm's Retirement Plan, my IRA and my wife's I.R.A. Upon withdrawal from my law firm I will receive the benefits described in the attached summary of the withdrawal provisions of the Partnership Agreement, which has been modified to eliminate my payout being dependent on the future success of the firm. Retirement Plan accumulations may remain invested with Merrill Lynch Asset Management and Prudential Insurance Company of America or may be withdrawn and invested elsewhere to provide retirement benefits.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will immediately terminate the activity or interest which may constitute a potential conflict of interest or which may create an appearance of impropriety. If confirmed, I will carefully scrutinize each matter before me and recuse myself if there is any conflict of interest or appearance of impropriety. I would also study and follow all ABA and Judicial Conference guidelines to avoid any appearance of impropriety. Categories of litigation which might present potential conflicts of interest would include litigation in which my firm or a partner or associate thereof was involved or litigation involving corporations in which I am a stockholder or bondholder.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   Please see copy of the financial disclosure report, required by the Ethics in Government Act of 1978, attached hereto.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   Financial net worth statement attached hereto.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   In the early 1970's, I was an unsuccessful candidate for the Summit Republican City Committee.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   In 1978, I was Residential Chairman for the United Way of Summit, New Jersey and contributed about 100 hours to assuring the success of that campaign. Several years ago I was presented with an award for my work in connection with Project Pass, an effort to assist minority law school graduates in their efforts to pass the New Jersey bar exam. This was a project of the Garden State Bar Association. See the attached letter from the Chief Justice of the Supreme Court, authorizing my participation and describing and approving Project Pass. I estimate I contributed about 120 hours to Project Pass. I am presently a Vice-President of the Summit High School P.T.A.; while this does not directly benefit only the disadvantaged, high-quality education is, in my view, a great benefit to the disadvantaged. I contribute about 5 hours per month to the P.T.A.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   I do not now belong, and to the best of my knowledge have never belonged to any organization that so discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances, which led to your nomination and interviews in which you participated).

   There is no federal judicial selection commission in my jurisdiction. My experience in the judicial selection process consisted of three interviews at the Department of Justice in December 1986 with respect to a vacancy on the Court of Appeals for the Third Circuit, and an inquiry from Stephen B. Markman in December of 1987 as to whether I would be interested in being considered for a vacancy on the United States District Court. I was also interviewed by three New Jersey Members of Congress.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

   No

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Whether I agree or disagree with a particular criticism from the academic community or from the public would depend upon the details of the action criticized and the nature of the criticism. If the criticism is well-informed and well-focused, then an equally well-informed and well-focused response is warranted. I do not have the perspective necessary to formulate well-considered views on the broad subject of "judicial activism". Such a perspective would require knowledge of every case decided by the federal judiciary which could be said to arguably demonstrate any of the tendencies identified in the question. However, without commenting on specific cases, I would offer the following views.

Problem-Solution, rather than Grievance-Resolution, can be very dangerous in a system which, by definition, is presented with only those aspects of the problem which matter to the litigants. Broader aspects of the problem should not be resolved without representation of those who would be affected by the solution developed by the court. Judges who routinely consider the impact of their decision upon society generally as well as upon the litigants, even though well-intentioned, may be doing more harm than good. They are certainly risking the imposition of solutions which should be left to other branches of government.

The Federal Rules of Civil Procedure, and case law developed thereunder, provide well-developed and well-tested methods for the imposition of far-reaching orders extending to broad classes of individuals. Those Rules have resulted from thorough consideration of the extent to which such remedies are appropriate. Cases not falling within the ambit of these Rules can and do arise which have far-reaching implications, but at the United States District Court level there is limited binding effect upon anyone other than the litigants. Other courts can and do disagree, until a higher court or courts resolve the matter. It would seem to be a waste of judicial resources (in addition to broader evils) to render decisions on a broader basis than is necessary to resolve the disputes between the litigants.

The judiciary should not impose broad affirmative duties upon governments and society, except insofar as the applicable constitutional principles require it. Federal judges should remember that they have not been elected, while members of Congress have been elected. Clearly, the imposition of broad, affirmative duties upon governments and society should in the first instance be left to elected officials; rarely if ever should a court evaluate, rather than interpret, the actions of an elected Legislature.

With respect to jurisdictional requirements such as standing and ripeness, both of those requirements are so fact-specific that any given case would probably stand on its own facts. However, having said that, I believe that the requirement of standing is necessary in order to guarantee that the constitutional requirement of a "case and controversy" involving the parties before the court is present. In today's society, many levels of many organizations feel justified in becoming involved in litigation to represent certain interests; it is the court's responsibility to differentiate between enthusiasm for litigation and the ability to properly represent all aspects of the particular litigant's position. As to ripeness, I would see no reason to accept a case for decision when there was the slightest chance that further executive or administrative action would moot the case or change the issues or facts. I regard this as a matter of the conservation of judicial resources.

Continuing oversight responsibilities are best exercised by those with the time, facilities and expertise to deal with the day-to-day aspects of a problem. Almost by definition, courts are not so equipped. In an extreme case where a duly-constituted administrator refuses to perform required duties, the preferred remedy should be contempt of court rather than assumption of the administrator's responsibilities. To the extent that an administrator is required to report regularly to the court as to compliance with the court's order, that would in most cases be a proper exercise of judicial power. Going beyond that and doing the administrator's job is one for which the federal courts are uniquely unqualified.

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved OMB No. 3209-0001

Page 1

Reporting Status (Check Appropriate Box) ☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer		Agency Use Only	OGE Use Only	
Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)		Termination Date (If Applicable) (Month, Day, Year)		
Reporting Individual's Name	Last Name LIPLAND	First Name and Middle Initial JOHN C.		
Position for Which Filing	Title of Position UNITED STATES DISTRICT JUDGE	Department or Agency (If Applicable) JUDICIARY		
Location of Present Office	Address (Number, Street, City, State and ZIP Code) 33 WASHINGTON STREET NEWARK, NEW JERSEY 07102	Telephone No. (Include Area Code) (201) 624-9300		
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held NONE			
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination SENATE JUDICIARY COMMITTEE	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No		
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date (Month, Day, Year) March 4, 1988		
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)		
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)		
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)		

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
[illegible] Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
JOHN C. LIPLAND	**Assets and Income**	2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

		BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets							BLOCK C Income																		BLOCK D Transactions Test	
		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)											If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC			None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	Examples:	XYZ Common				x				x									x								x	
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$60,000			
	1	Stryker, Tams & Dill Newark, NJ						X								ptnrshp income								X	$228,201			
	2	1/2 interest, 208 Deacon Blvd., Sea Girt, NJ						X			X								X									
	3	C.D. Lane Rd., Windham, NY						X			X										X							
	4	United Jersey Banks Inc. common				X				X									X									
	5	USX Corp. common		X						X								X										
	6	Henley Group Inc. common	X							X							X											
	7	Allied Signal Inc. common		X						X								X										
S	8	Exxon Corporation common				X				X									X									
S	9	Kansas City Power & Light common		X						X								X										
	10	AT&T 2000 8 3/4% Bond		X								X						X										

PREVIOUS EDITION USABLE

[illegible]

Form Approved

Reporting Individual's Name	Assets and Income	Page Number	3	Schedule A
JOHN C. LIPLAND				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Sch. B Part I for those assets (excluding those sold for a loss).	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	XYZ Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											partnership income									[illegible]			
11	Cincinnati Gas & Electric Co. Bond		X								X						X										
12	1/3 Unit, Franklin Bldg. Assoc. (Chicago Real Estate investment) - cost				X																						
13 S	Webster Cash Reserves		X						X								X										
14	Merrill Lynch Ready Assets		X						X								X										
15 DC	Dreyfus Liquid Assets			X					X								X										
16	Dreyfus Liquid Assets - IRA			X					X								X										
17	Vested Pension Acct. (Merrill Lynch Asset Management) Stryker, Tams & Dill Pension Plan						X		X		X	X								X							

SF 278 (Rev. 1/86)
5 CFR Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0001

Reporting Individual's Name JOHN C. LIPLAND	**Assets and Income**	Page Number 4	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	XYZ Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											partnership income									[illegible]			
18	Vested Pension Acct. (Prudential Insurance Co.) - Stryker, Tams & Dill Pension Plan						X		X		X	X								X							
19 S	L'Ambiance Inc. Summit, NJ														spouse's wages												
20	City of Summit NJ														legal fees									$6,276			
21 S	City Federal Savings Bank - IRA		X								X						X										
22	Royal Doulton USA Inc.														Director's fee									$5,000			
23	Cash Value - various life insurance policies				X																						
24	Allied Corporation 6% Dis. Note 12/15/90	X									X					X											
25	Allied Corporation 6% Dis. Note 12/15/88	X									X					X											

SF 278 (Rev. 1986)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name JOHN C. LIPLAND	**Assets and Income**	Page Number	4A	Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets (excluding those sold for a loss).	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
Example	XYZ Common				x				x									x								x	
	Doe Jones & Smith, Hometown, USA			x											Partnership Income									$40,000	[illegible]		
26: S	Howard Savings Bank		X								X						X										

SF 278 (Rev. 1/89)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
JOHN C. LIPLAND

N O T   A P P L I C A B L E

Page Number	5	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

S, J, or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example:	XYZ Common	X			[illegible]			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S		Source (Name and Address)	Brief Description	Value
	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/89	$600
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3				
4				
5				
6				

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name JOHN C. LIPLAND	Page Number	6	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☐

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
	1	Franklin Bldg. Associates, Chicago, Illinois	Capital contributions to	1984	0			X			
	2		investor limited partnership								
	3		which I have agreed to make								
	4		over the period 1/1/87-								
	5		1/15/90								
	6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/75 ptnership agmnt.
	Pursuant to partnership agreement, will receive sum certain payout of	Stryker, Tams & Dill, Newark, NJ	1966 Ptnership
	partnership interest, payable over a period of time or in a lump sum		Agmnt, and 2/12/88
	on withdrawal from the firm.		letter (attached)
	May leave pension accounts invested with Prudential Insurance Company	Prudential Insurance Company,	Pension Plan
	and Merrill Lynch Asset Management. No contributions by me or on my	Newark, NJ Merrill Lynch Asset Management,	
	behalf to Stryker, Tams & Dill Pension Plan after my withdrawal.	New York, NY	

Reporting Individual's Name	JOHN C. LIPLAND

Page Number	7	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	Stryker, Tams & Dill, Newark, NJ	Law Firm	Partner	1/65	Present
	Royal Doulton USA Inc.	Corporation	Director	1/85	3/87
	Association of the Federal Bar, Newark, NJ	Bar Association	Vice President	1983	Present

Part I
Compensation In Excess Of $5000
Paid By One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	AMERICAN INTERNATIONAL GROUP, Law Dept. 70 Pine Street - 22nd Floor New York, New York 10270	Legal services
	BANKERS TRUST COMPANY, Law Dept. 280 Park Avenue, New York, New York 10017	Legal services
	BETTER BAKED FOODS Smedley & Grahamville Streets P.O. Box 432 North East, Pennsylvania 16428	Legal services

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/83)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
JOHN C. LIPLAND

Page Number	8	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties'
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	BRUNSWICK CORPORATION, Law Dept. One Brunswick Plaza, Skokie, Illinois 60077	Legal services
	CASTROL INC. 1500 Valley Road P.O. Box 973 Wayne, New Jersey 07474-0973	Legal services
	DELMOOD FOODS, INC. 170 Saw Mill River Road Yonkers, New York 10701	Legal services

PREVIOUS EDITION USABLE

278-104

FPM Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
JOHN C. LIPLAND

Page Number	9	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	HILLS BROS. COFFEE, INC. P.O. Box 7449, San Francisco, California 94120	Legal services
	ROBERT J. KENNEDY 4 Orchard Lane Rumson, New Jersey 07760	Legal services
	LOFD CORPORATION 2000 West Grandview Boulevard P.O. Box 10038 Erie, Pennsylvania 16514-0038	Legal services

PREVIOUS EDITION USABLE

[illegible]

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

OMB No. [illegible]

Page Number	10	Schedule D	

Reporting Individual's Name

JOHN C. LIFLAND

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	ROYAL DOULTON USA INC. 700 Cottontail Lane, Somerset, New Jersey 08873	Legal services
	GENERAL BISCUIT BRANDS, INC. 891 Newark Avenue Elizabeth, New Jersey 07207	Legal services
	WILLIAM E. GREIG 1430 Pan Palm Road Boca Raton, Florida 33432	Legal services

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
FPM Chapter 734
U S Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name JOHN C. LIPLAND	Page Number	11	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	MARTINDALE-HUBBELL, INC. P.O. Box 1001, Summit, New Jersey 07901	Legal services
	MINNESOTA MINING AND MANUFACTURING COMPANY Legal Dept., P.O. Box 33428 St. Paul, Minnesota 55133-3428	Legal services
	CITY OF SUMMIT City Hall Summit, New Jersey 07901	Legal services
	STRYKER, TAMS & DILL 33 Washington Street, Newark, New Jersey 07102	Legal services

PREVIOUS EDITION USABLE

278-106

DISABILITY (Article Six)

6.2 Prior to 5th anniversary of admission

(a) % of net cash on deposit
(b) % in value of securities

6.3 After 5th anniversary, prior to 15th

(a) and (b) as above
(c) % of outstanding bills for services and disbursements
(d) 1/2% of (net profit for 12 calendar months after termination, reduced by amounts collected during such period under (c))

6.4 After 15th anniversary, prior to 25th and prior to attaining age 63

(a), (b) and (c) as above
(d) % of (net profit for 12 calendar months after termination of membership, reduced by amounts collected during such period under (c))

6.5 After 25th anniversary or after attainment age 63, as if retired under 9.1(b)

WITHDRAWAL (Article Eight)

8.2 Prior to 5th anniversary

(a) % of net cash on deposit
(b) % in value of securities

8.3 After 5th anniversary, prior to 15th

(a) and (b) as above
(c) % of outstanding bills for services and disbursements
(d) 1/2% of (net profit for 12 calendar months after termination, reduced by amounts collected during such period under (c))

8.4 After 15th anniversary

(a), (b) and (c)as above
(d) % of (net profit for 12 calendar months after termination of membership, reduced by amounts collected during such period under (c))

8.5 (a) and (b) paid on last day of month following month of withdrawal
(c) paid within 30 days after receipt
(d) paid in installments over a period not exceeding 2 years as determined by management committee.

RETIREMENT (Article Nine)

9.1 Sets ages for retirement

9.2 After retirement:

(a) % of net cash and securities payable within 30 days
(b) Where effective date not at end of calendar year, a retirement payment for balance of calendar year in amount computed by multiplying net profit received after retirement to end of year by proportion of % applicable under (c).
(c) Installment retirement payments as follows: If retires after attaining age 70, (9.1a) net profit each year times 25% of the highest percentage held by retiring partner during 5 years prior to retirement.

If retires after 25 years as partner or after 65 at request of firm (9.1 b) net profit for each year times applicable portion of his percentage during 24 months prior to retirement,

9.3 On death of retired partner, pro rata annual payment to date of death.

9.4 If upon death, total retirement payments made to him or estate are less than 125% of amounts distributed to him during 12 months preceding retirement, firm shall pay to his estate the difference.

DEATH (Article Seventh)

7.1 Prior to retirement:

(a) % of net cash
(b) % of securities
(c) % of book value of tangible assets as depreciated
(d) % of outstanding bills for services and disbursements
(e) 125% of average of yearly amounts distributed for 3 calendar years preceding year in which death occurs.

7.2

(a) and (b) paid within 2 months after death
(d) paid within 30 days after receipt
(c) and (e) equal monthly installments over 6 year period after death.

STRYKER, TAMS & DILL
33 WASHINGTON STREET
NEWARK, N.J. 07102

(201) 624-9300
TELECOPIER
(201) 623-1038
ZAP MAILER FAX
(201) 623-2037

1 PALMER SQUARE
PRINCETON, N.J. 08542
(609) 683-5890

55 MADISON AVENUE
MORRISTOWN, N.J. 07960
(201) 540-0555

BURTIS W. HORNER
GEORGE A. AGUILAR
BARTHOLOMEW T. ZANELLI (1926-87)
JOHN C. LIFLAND
RICHARD B. McGLYNN
EDWARD H. LIPPINCOTT
STEPHEN H. KNEE
WILLIAM S. TUCKER, JR.
RICHARD R. SPENCER, JR.
JOHN J. RIZZO
CHARLES M. COSTENBADER
DAVID L. MENZEL
CHARLES H. FRIEDRICH, III
THOMAS C. PHELAN
EDITH K. PAYNE
MILTON S. HUNTER, III
REYNOLD NEBEL, JR.

RICHARD T. PHILIPS
STEPHEN B. GENZER
JOSEPH N. SCHMIDT, JR.
COUNSEL

WILLIAM L. DILL, JR
OF COUNSEL

SUSAN J. MURR
JANET S. LYNCH
MARK L. MUCCI
DEBORAH J. GANNETT
ELLEN S. DELO
CYNTHIA J. BORRELLI
JOSEPH E. KINSELLA, JR.
DOUGLAS E. MOORE
JANICE L. BIRNBAUM
ROBERT DREWES
BEVERLY A. SHARPE
SARA B. STEWART
JEANNE M. SZAFRANOWSKI
DARRYL W. SIMPKINS
EDGAR M. WHITING, III
JANICE MANGANELLO
FRANCES FARBER-WALTER
CHRISTOPHER W. HYDE
WILMA M. KENNY
PATRICIA J. CHANDLER

February 12, 1988

John C. Lifland, Esq.

Dear John:

I am writing this letter to set forth the adjustment agreed to by the Firm with respect to the withdrawal provisions of our Partnership Agreement in the event you withdraw from the firm to accept a federal judgeship.

The firm has agreed that it will modify Article Eight of the Agreement in such event so as to eliminate any conceivable, ethical concern about your payout being dependent on the future success of the firm.

Accordingly, in your situation Article 8.4(d) will be amended so that as of the date of your withdrawal a sum certain will be established, which will be the actuarial equivalent of your percentage of the net proceeds reasonably anticipated for the twelve calendar months after withdrawal. That sum certain will not be affected by events occurring after the date of withdrawal.

From that sum certain will be deducted amounts paid to you under Article 8.3(c) of the Agreement, which represents your percentage share of the outstanding bills for services and disbursements on the date of your withdrawal. The amount computed under this paragraph also is not affected by events occurring after the date of withdrawal.

It is our expectation that all amounts paid to you under both paragraphs will have been paid in full by the second anniversary of your withdrawal.

Best regards.

Sincerely,

George A. Aguilar

George A. Aguilar

John C. Lifland

FINANCIAL STATEMENT

NET WORTH

1/15/88

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	23571		
U.S. Government securities—add schedule	0		
Listed securities—add schedule A	55871		
Unlisted securities—add schedule	0		
Accounts and notes receivable:			
Due from relatives and friends	0		
Due from others	0		
Doubtful	0		
Real estate owned—add schedule B	800,000		
Real estate mortgages receivable	0		
Autos and other personal property	34500		
Cash value—life insurance	20158		
Other assets—itemize:	440,667		
See Schedule C			
Total assets	1,374,767		

LIABILITIES			
Notes payable to banks—secured	0		
Notes payable to banks—unsecured	0		
Notes payable to relatives	0		
Notes payable to others	0		
Accounts and bills due	1500		
Unpaid income tax	0		
Other unpaid tax and interest	0		
Real estate mortgages payable—add schedule D	167,690		
Chattel mortgages and other liens payable	827		
Other debts—itemize:			
Car lease-remaining			
payments	6996		
Franklin Bldg Assocs-	10000		
remaining cap. contribs			
Total liabilities	187,013		
Net worth	1,187,754		
Total liabilities and net worth	1,374,767		

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	0		
On leases or contracts	0		
Legal Claims	0		
Provision for Federal Income Tax	0		
Other special debt	0		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	no		
Are you defendant in any suits or legal actions?	no		
Have you ever taken bankruptcy?	no		

SCHEDULE A

Listed Securities

AT & T 2000 8 3/4% Bond	$2000
Cincinnati Gas & Electric Bond	3000
United Jersey Banks, Inc. common	28,600
Allied-Signal, Inc. common	1638
Exxon Corp. common	16,400
Kansas City Power & Light common	1590
USX Corp common	2372
Henley Group, Inc. common	271
	$55,871

SCHEDULE B

Real Estate Owned

116 Beekman Road, Summit, NJ	$450,000
208 Beacon Blvd., Sea Girt, NJ (½ interest)	150,000
C.D. Lane Road, Windham, NY	200,000
	$800,000

SCHEDULE C

other assets

Webster Cash Reserves	1686
Merrill Lynch Ready Assets	2202
Dreyfus Liquid Assets	13,228
½ interest - Sailboat	25,000
Vested pension accounts (Stryker, Tams& Dill, JCL I.R.A., JGL I.R.A.)	210,000
1/3 Unit, Franklin Bldg Assocs. (cost)	38,551
Approximate Net Withdrawal Value, Stryker,tams & Dill Partnership Share	150,000
	$440,667

SCHEDULE D

Real Estate Mortgages Payable

Fidelity Union Bank	$ 19,000 (approx)
City Federal Savings Bank	148,690
	$167,690

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

March 10, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: JOHN C. LIFLAND
United States District Court
for the District of New Jersey

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of John C. Lifland for appointment as Judge of the United States District Court for the District of New Jersey.

A substantial majority of our Committee is of the opinion that Mr. Lifland is "Well Qualified" for this appointment. The minority found him to be Exceptionally Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

DAVID A. EZRA

Birth:	June 27, 1947	Columbus, Ohio
Legal Residence:	Hawaii	
Marital Status:	Married	Judith A. Ezra 3 children
Education:	1965 - 1966	Chaminade College of Honolulu
	1966 - 1969	St. Mary's University B.B.A. degree, magna cum laude
	1969 - 1972	St. Mary's University School of Law J.D. degree
Bar:	1972	Hawaii
Experience:	1972(summer)	Law Clerk Office of the Corporation Counsel City and County of Honolulu
	1972 - 1973	Greenstein, Cowen & Frey Associate
	1973 - 1980	Anthony, Hoddick, Reinwald & O'Connor (successor firm - (Hoddick, Reinwald, O'Connor & Marrack) Associate Partner
	1978 - present	Wm. S. Richardson School of Law Adjunct Professor of Law
	1980 - present	Ezra, O'Connor, Moon & Tam Partner
Office:	Twentieth Floor, Central Pacific Plaza 220 South King Street Honolulu, Hawaii 96813 808 545-3030	
Home:	2387 Halehaka Street Honolulu, Hawaii 96821	

To be United States District Judge for the District of Hawaii

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

David Alan Ezra

2. Address: List current place of residence and office address(es).

Residence: 2387 Halehaka Street
Honolulu, Hawaii 96821

Office: 20th Floor, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813

3. Date and place of birth.

Colombus, Ohio
June 27, 1947

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married.
Judith Ann (Albach) Ezra
Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1. Chaminade College of Honolulu
3140 Waialae Avenue
Honolulu, Hawaii 96816
1965-1966 - left to transfer to St. Mary's

2. St. Mary's University
One Santa Maria
San Antonio, Texas 78228
1966-1969, B.B.A. 1969 Magna Cum Laude

3. St. Mary's University School of Law
One Santa Maria
San Antonio, Texas 78228
1969-1972
Degree: J.D., 1972
Graduated No. 1 in class of 1972

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1969-71: St. Mary's University
San Antonio, Texas
Student Work-Study Program

1972: Law Clerk, Summer Hire
City and County of Honolulu
Office of the Corporation Counsel
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

1972: Active Duty U.S. Army

1972-73: Greenstein, Cowen & Frey
Suite 1316, Ala Moana Building
1441 Kapiolani Blvd.
Honolulu, Hawaii 96814
Plaintiff personal injury and criminal defense practice

1973-80: Associate and Partner
Anthony, Hoddick, Reinwald & O'Connor/
Hoddick, Reinwald, O'Connor, & Marrack
Suite 2400, PRI Tower
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813
General civil and commercial trial practice with emphasis on construction and general trial matters.

1980-present: Director and Managing Director
Ezra, O'Connor, Moon & Tam
20th Floor, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
General civil and commercial practice with emphasis on banking, bankruptcy and commercial practice.
Martindale-Hubbell AV rated

1978-present: Adjunct Professor of Law
William S. Richardson School of Law
2515 Dole Street
Honolulu, Hawaii 96822
Adjunct Professor of Legal Remedies - 3 credit course.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes.
United States Army Reserve
Military Police Corps
1st Lt.
575-52-5409
1971 - 1977
Inactive Reserve

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1. Elected Delta Epsilon Sigma, National Scholastic Honor Society - 1968.

2. Dean's Honor List, St. Mary's University School of Business Administration - 1966-1969.

3. B.B.A. Degree Magna Cum Laude - 1969.

4. Who's Who in American Colleges and Universities - 1969.

5. Awarded Daugherty Fund Scholarship for academics - St. Mary's University School of Law - 1971

6. Awarded San Antonio, Texas Bar Association Auxiliary Scholarship for academic achievement - 1972

7. Selected by law school faculty to teach credit course to first year law students in legal research and writing - 1971.

8. Graduated No. 1 in law school class of 1972 - St. Mary's University School of Law.

9. Hawaii Council of Advisors, American Arbitration Association.

10. Phi Delta Phi - Richardson Inn, University of Hawaii School of Law (Honorary Member)

11. Appointed by the Supreme Court of Hawaii as an arbitrator under mandatory civil arbitration program - 1986.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Hawaii State Bar Association
1972 - present

American Bar Association
1972 - present

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Bar Association
United States Navy League, Honolulu Chapter
American Arbitration Association
Phi Delta Phi Legal Fraternity (Tarlton Inn)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission **and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership**. Give the same information for administrative bodies which require special admission to practice.

1. Supreme Court of Hawaii, 1972 - present

2. United States District Court for the District of Hawaii, 1972 - present

3. United States Court of Appeals for the Ninth Circuit, 1972 - present

4. United States Supreme Court, 1977 - present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written **or edited.** Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on **issues involving** constitutional law or **legal** policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Hawaii Collection Practices Manual - co-author; Business & Reviews Editor, St. Mary's Law Journal, 1971; Hawaii Construction Law - What To Do And When - 1987 (co-editor/author); various other continuing legal education manuals regarding construction law, mechanics' lien law, etc.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. January 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

   No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1969-71: St. Mary's University
San Antonio, Texas
Student Work-Study Program

1972: Law Clerk, Summer Hire
City and County of Honolulu
Office of the Corporation Counsel
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

1972-73: Greenstein, Cowen & Frey
Suite 1316, Ala Moana Building
1441 Kapiolani Blvd.
Honolulu, Hawaii 96814
Plaintiff personal injury and criminal defense practice

1973-80: Associate and Partner
Anthony, Hoddick, Reinwald & O'Connor/Hoddick, Reinwald, O'Connor, & Marrack
Suite 2400, PRI Tower
Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813
General civil and commercial trial practice with emphasis on construction and general trial matters.

1980-present: Director and Managing Director
Ezra, O'Connor, Moon & Tam
20th Floor, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
General civil and commercial practice with emphasis on banking, bankruptcy and commercial practice.
Martindale-Hubbell AV rated

1978-present: Adjunct Professor of Law
William S. Richardson School of Law
2515 Dole Street
Honolulu, Hawaii 96822
Adjunct Professor of Legal Remedies - 3 credit course.
Taught third year students (not teaching this year).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

a) 1972-1973 - Plaintiff personal injury and some criminal defense work.

b) 1973-1980 - Insurance defense and construction related litigation. Also, some public utilities commission practice. Clients included construction contractors, homeowners' associations and small businesses.

c) 1980 - present - General commercial. Also continued to represent clients in construction litigation matters and in bankruptcy.

b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

a) Individuals, sole proprietorships, other businesses, financial institutions, small and large construction companies.

Specialties are not recognized in Hawaii, but I have emphasized general civil trial practice.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in court regularly. Because of the nature of my practice, appearances in State and Federal Court, including Bankruptcy Court, have typically been to argue major motions such as motions for summary judgment, injunctions, discovery motions, etc. My frequency of appearances has remained fairly constant during the last five years.

2. What percentage of these appearances was in:
(a) Federal courts.
(b) State courts of record.
(c) Other courts.

Federal court - 25%
State court - 75%
Other courts - 0%

3. What percentage of your litigation was:
(a) Civil.
(b) Criminal.

Civil - 97%
Criminal - 3%

I have handled several and tried three criminal defense matters to a verdict during the early years of my practice. Some of these were on a pro bono basis.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Tried approximately seven cases including a trial before Federal Court Three Judge Panel in major State Reapportionment case. Does not include numerous summary judgment terminations in major state and federal cases.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

Jury - 10%
Non-Jury - 90%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Craig Travis, et al. v. Jean King, Lieutenant Governor of the State of Hawaii, et al., Civil No. 81-0433; United States District Court for the District of Hawaii (3 Judge Panel), 1981-1983.

Judge(s): District Judges Samuel P. King, Spencer Williams, and Senior Circuit Judge Chambers

Co-Counsel:
Brian K. Yomono, Esq.
Ezra, O'Connor, Moon & Tam
220 S. King Street, 20th Floor
Honolulu, Hawaii 96813
Telephone No.: (808)545-3030

Michael A. Hess, Esq.
310 First St., S.E.
Washington, D.C. 20003
Telephone No.: (202)863-8638

I was lead trial counsel for Plaintiffs in the first successful challenge in Hawaii history to statewide reapportionment as promulgated by the State Reapportionment Commission. As a result of this case, a special master was appointed by the Court and a fully constitutional plan was implemented statewide, multi-member districts were abolished and new voting districts were created. Case was submitted on the record with final argument to the Court which I handled for my clients.

Defendant State of Hawaii was represented by James T. Funaki, Special Deputy Attorney General, and Laurie E. Furuya, Deputy Attorney General, whose current addresses are as follows:

James T. Funaki, Esq.
Okumura, Takushi, Funaki & Wee
1400 PRI Tower, Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)543-9800

Laurie E. Furuya, Esq.
Law Offices of Dudley G. Akama
806 Bishop Trust Building
1000 Bishop Street
Honolulu, Hawaii 96813

2. A & H Construction Co., Inc. v. Swinerton & Walberg, Inc., Civil No. 76-385, U.S. District Court, District of Hawaii, 1978.

Judge: U.S. District Judge Laughlin Waters (Central District of California, sitting at District of Hawaii).

I handled the courtroom trial work as chief counsel for my client in this matter. Involved dispute over heavy equipment used in the construction of the Hyatt Regency Hotel, Waikiki, Hawaii. There were numerous fact and expert witnesses and technical issues.

Judgment by the Court in favor of my client at trial conclusion.

Opposing Counsel: James S. Campbell, Esq.
Cades, Schutte, Fleming & Wright
1000 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)521-9204

Walter Davis, Esq.
Davis, Reid & Richards
1200 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)524-2466

3. The Association of Apartment Owners of Mt. Terrace Condominium v. Windward Properties, Inc., et al., Civil No. 52425, Circuit Court of the First Circuit, State of Hawaii; Filed 1977, through 1983

Judge: Circuit Judge Robert Won Bae Chang

This was one of the first major homeowner generated condominium construction litigations under provisions of the Hawaii Horizontal Property Regime Act, Section 514A of the Hawaii Revised Statutes. I was lead counsel for the plaintiff association in this case. I personally conducted substantial discovery, including numerous lay and expert depositions, records productions and interrogatories, which resulted in a number of major motions which culminating in a substantial settlement for my client. This case established precedent in important areas such as the nature and extent of the "common elements" of a project, standing to sue, and damages issues. Regarded as the forerunner of a long series of subsequent homeowner suits.

Opposing counsel: (Major)

William S. Hunt, Esq.
Paul, Johnson & Alston
1300 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)524-1212

Vernon Y. T. Woo, Esq.
Woo, Kessner & Duca
19th Floor, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone No.: (808)524-0955

George W. Playdon, Jr., Esq.
Schutter Playdon Glickstein
Suite 618 Kawaiahao Plaza
567 S. King Street
Honolulu, Hawaii 96813
Telephone No.: (808)524-4600

4. Fred Teixeria v. Frank Carvajal, Civil No. 43533, Circuit Court of the First Circuit, State of Hawaii; 1975.

Judge: Tried before then Circuit, now State Supreme Court Justice, Yoshimi Hayashi.

This was an action to determine ownership of a valuable Hawaiian Homes lease in Waimanalo, Hawaii. The lease, purchased by Plaintiff in his own name for $12,000, was subsequently valued at several hundred thousand dollars. I represented the defendant-counterclaimant, an individual who could not read or write English, who claimed to have been a partner of Plaintiff and to have contributed to the purchase. The case involved issues of law on the conclusiveness of the lease documents to determine title, statute of frauds issues, and part performance in lease rather than a purchase context.

This case involved a good deal of testimony on the tracing of funds and other issues. The Court entered judgment in favor of my client on all major issues, ordered the lease sold and the proceeds divided. I handled all trial work for my client.

Opposing counsel:

Michael P. O'Connor, Esq.
20th Floor, Central Pacific Plaza
220 S. King Street
Honolulu, Hawaii 96813
Telephone No.: (808)545-3030

5. Onishi v. City and County of Honolulu, Civil No. 31613, Circuit Court of the First Circuit; 1973

This was a plaintiff's personal injury action involving legal issues in Hawaii of governmental liability for the conduct of employees acting in the official performance of their duties. Co-tried (second chaired) the case and was solely responsible for the drafting of jury instructions which were subsequently adopted as standard instructions in similar issue cases. Resulted in a verdict of $260,000 for our client which at the time was one of the largest verdicts in a case of its type in Hawaii.

Judge: Retired Circuit Judge Y. Fukushima

Co Counsel: Hyman Greenstein
(deceased)

Opposing counsel: Harold Hu, Esq.
1438 Ala Iolani Street
Honolulu, Hawaii 96819
Telephone No.: (808)839-5404

6. State of Hawaii, by Tany Hong, Attorney General v. Erkel Greenfield and Associates, et al., Civil No. 71916, Circuit Court of the First Circuit; Severud & Perrone brought in by Second Amended Complaint - 1984 to present

Judge: Honorable Frank T. Takao

This is a major litigation involving the construction of the Aloha Stadium (Hawaii's 60,000 seat baseball and football stadium). We represent the first engineers on the project, Severud & Perrone. The State claims damages of 10 or more million dollars for use of allegedly improper materials and improper design of the moving elements of the project.

We recently obtained summary judgment for our client on all counts of the complaint with the exception of negligence. This involved a first impression ruling in Hawaii on the issue of whether a design professional could be held strictly liable for alleged design deficiencies or for "unfair and deceptive" trade practices. The case is still in litigation with the parties currently attempting to mediate a settlement.

Opposing Counsel: Edward J. Bybee, Esq.
(for State of Hawaii)
Rother, Bybee, Chang & Rulon
Suite 2057, PRI Tower
733 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)537-5311

7. Pacific Construction Co. v. Lyon, Gordon & Co., et al. (Pearlridge Mall Litigation), Circuit Court of the First Circuit; 1976-1979

Judge: Retired Judge H. Shintaku

This was a major litigation involving the construction of Phases I, II and III of the Pearlridge Mall Shopping Center, Aiea, Hawaii. The issues included construction defects, pricing, allegations of collusion and fraud, and a whole range of contract and quasi-contract claims. Portions of the case were arbitrated, portions were tried (mechanics' lien trials under Hawaii procedure). There were hundreds of thousands of documents produced and reviewed, countless depositions taken and numerous major discovery and dispositive motions, including proceedings held in Illinois courts to compel production (successful). I personally handled a significant portion of the discovery and courtroom work for my client. The case was finally settled on the eve of trial.

Opposing counsel: (Major) Leon Gerry of Los Angeles, California (Deceased)

Honorable Frank D. Padgett
Associate Justice
Supreme Court of Hawaii
P.O. Box 2560
Honolulu, Hawaii 96804
Telephone No.: (808)537-3047

8. Castle & Cook (Dole Corp.) v. Libby, McNeill & Libby, U.S. District Court for the District of Hawaii; 1975-76

Judge: U.S. District Judge Martin Pence

Federal Court action arising out of the sale by Libby of its entire pineapple operation to Dole Corporation. Case involved dispute over payments to be made under existing labor contracts to certain classes of seasonal employees who had been working for Libby over a number of years. The amount in dispute involved several hundred thousand dollars. The sale contract was ambiguous and the case turned on the language of the relevant labor contracts, the intent of the parties and other developed and related information. Extensive document discovery and records depositions were done during the course of trial preparation. Also, oral depositions were taken. I was involved in document review, preparation for depositions, and other pretrial work under direction of a senior partner. The case was finally settled.

This case was significant for me as my first real involvement in the review and analysis of issues surrounding labor contracts and their interpretation. Also involved significant questions of law regarding parol evidence and contract interpretation.

Opposing Counsel: William F. Quinn, Esq.
Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
Telephone No.: (808)547-5600

9. American Savings and Loan Association v. Makena Surf, et al., Civil No. 85-1772, Circuit Court of the First Circuit, State of Hawaii; 1985 to present

Judge: Circuit Judge Philip T. Chun
Circuit Judge Robert G. Klein

This is a major project foreclosure and money damages action involving claims totalling in excess of 12 million dollars. The case has gone through extensive discovery proceedings and involves significant counterclaims. I am lead counsel for the Plaintiff and have argued the major dispositive motions. We have now obtained summary judgment in a decision from the Circuit Court severing the counterclaims. The foreclosure and money judgment aspects of the case (granting of summary judgment) were recently affirmed on Appeal to the Hawaii Supreme Court.

Opposing Counsel: (Major)
Bruce C. Bigelow, Esq.
Case & Lynch
2500 Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)547-5400

Micheal C. Webb, Esq.
Kiefer, Oshima, Chun & Webb
4th Floor Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)528-4200

10. Patricia Saiki, et al. v. Raymond K. Pua, City Clerk, City and County of Honolulu, Hawaii, et al., Civil No. 85-0090, U.S. District Court for the District of Hawaii; 1985-1986

Judge: U.S. District Judge Martin Pence

Action to set aside city-wide reapportionment plan and to reapportion councilmatic districts. I acted as lead trial counsel for plaintiffs and argued the major motions. After winning several important motions and conducting extensive discovery the defendants offered to stipulate to a judgment in my client's favor. A new compromise plan was established and the elections proceeded under the new plan. The Court awarded fees and costs to my firm as the prevailing party under federal statutes.

Opposing Counsel:
Jerrold K. Guben, Esq.
Reinwald, O'Connor & Marrack
Suite 2400, PRI Tower
733 Bishop Street
Honolulu, Hawaii 96813
Telephone No.: (808)524-8350

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the

nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

1. United States of America v. St. Louis-Chaminade Education Center, Civil No. 85-0883; United States District Court for the District of Hawaii.

This was a multi-million dollar action brought by the United States government on behalf of the Veteran's Administration to recoup alleged overpayments to St. Louis High School on behalf of an educational program commonly referred to as the "Prep Program". While my client St. Louis High School denied liability, the significance of the case centered on the legal issue as to when the government knew or reasonably should have known that a cause of action existed for purposes of the statute of limitations. After extensive investigation and development of my client's case, we filed a motion for summary judgment which was heard by visiting United States District Judge Carl C. Mueke. After argument and hearing the Court took the matter under advisement and later rendered a ruling adopting the view espoused by the government. We sincerely believed the Court had adopted the wrong standard, and filed an extensive motion for reconsideration. The Court reversed itself, adopted my client's view of both the law and the state of the record, and granted St. Louis High School summary judgment. This case is now on appeal to the Ninth Circuit Court of Appeals. It is significant not only because of the amount of money involved and the impact it will have upon St. Louis High School in the event an adverse judgment is rendered, but also because of the state of the record and the important legal question regarding interpretation of certain federal statutes regarding the statute of limitations.

2. I have acted as an Arbitrator, including Chief Arbitrator, in several different matters, some involving significant sums of money and complex issues of fact.

These include the Bekin-Grumman/Pacific Power Service arbitration in which I was the Chief Arbitrator on a three arbitrator panel, and my service as an arbitrator for the Supreme Court of Hawaii under the mandatory arbitration program. I also serve on the Hawaii Council of Advisors of the American Arbitration Association

3. Since 1978 I have been a member of the faculty of the University of Hawaii as an adjunct professor of legal remedies.

During most of that period of time I have taught third year law students a three credit course in legal remedies, which includes equity, damages and some bankruptcy. Although this activity involved a considerable amount of effort and long hours of study and work, I am very proud of the fact that there are several hundred young lawyers practicing in Hawaii who have taken my course and I hope have benefited from it.

4. I have done extensive legal work for several savings institutions, thrifts, banks and other financial institutions in assisting them to work out problem loans and other related problems. I have also done work on a largely _pro bono_ basis for the Hawaii Bankers Association, Hawaii League of Savings Institutions, Hawaii Financial Services Association and the Mortgage Bankers Association of Hawaii.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

    Arrangement with the law firm of Ezra, O'Connor, Moon & Tam for payout of ownership interest of approximately $300,000 over a three year period.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

    I would, if confirmed, expect to recuse myself from sitting as a judge in any matter involving either a present or former client or my present law firm where there would be even an appearance of a conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

    See Attachment 1.

5. Please complete the attached financial net worth statement in detail (Add schedules called for).

    See Attachment 2.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

    Yes. Congressional Campaign of Representative Patricia Saiki (R) Hawaii, 1986. I was a member of Rep. Saiki's Finance Committee, although my involvement in actual fund raising was minimal.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I did some *pro bono* criminal defense and domestic relations work through the First Circuit Court, State of Hawaii program then in existence.

Since 1978 I have been an adjunct professor of law at the University of Hawaii law school which has taken up a considerable amount of time. I have also worked with law students and on law school projects in conjunction with the Court on a non-compensation basis.

I undertook representation of the individual plaintiffs in the reapportionment cases as a public service with the understanding that the only fees I or my firm would be paid for our work would be those fees awarded by the federal court if my client was the prevailing party at the conclusion of the litigation. In fact, we were successful in the reapportionment cases and were awarded fees under the Federal Civil Rights Statutes which covered a portion, but not all, of the time expended.

I have also spent considerable time on a non-compensated basis teaching continuing legal education courses in various areas of the law, including bankruptcy, construction, mechanics' liens, and other subjects.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates-- through either formal membership requirements or the practical implementation of membership policies? If so, list, which dates of membership. What have you done to try to change these policies?

No. I do not now nor have I ever belonged to any such organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, there is such a commission. The present Charter of the Hawaii Commission provides that my name will be submitted by the Senior United States Senator for review after my nomination by the President. Therefore, there has not been an opportunity, as yet, for the Hawaii Commission to consider my qualifications.

I was contacted by the United States Department of Justice in July, 1987 and asked to come to Washington, D.C. for interviews with Dept. of Justice attorneys. I did so and participated in several interviews at the Dept. of Justice. The interviews centered on my personal and professional background, including my legal education and experience. I was queried on my understanding of the law and federal procedure.

Following the interviews and upon my return to Hawaii, I was notified that my name was being submitted to the Federal Bureau of Investigation and to the American Bar Association for investigation and review.

The FBI and the ABA conducted and concluded their investigations. I was then informed that my name would be submitted to the United States Senate.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary with the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The role of the United States District Courts in the administration of justice has been well established by the Constitution, statutes, and binding judicial precedent. This role has been mandated in large part by the "separation of powers" doctrine.

When a District Court Judge ignores his or her proper and well defined role and seeks to become a maker of law rather than an interpreter of the law, he or she does a disservice to our system of government.

The doctrines of ripeness, standing, and other jurisdictional requirements have developed as a framework within which the District Court can hear and resolve cases and controversies properly brought before it. It is appropriate that the District Courts operate within that framework, neither artificially expanding their jurisdiction as a vehicle to impose their personal views or private agenda, nor refusing to take jurisdiction where it properly lies under the Constitution or statutes.

The District Judge must be mindful of judicial precedent and the fundamental tenet that in our democratic system it is the elected representatives of the people, both in the several state legislatures and Congress, and not the judiciary that are primarily responsible for enacting law. It is the function of the federal courts to interpret that law, in appropriate cases determine whether it is at variance with the Constitution, and in every instance adjudicate each case impartially on its individual merits.

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3206-0093

Page 1

Reporting Status *(Check Appropriate Box)*

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only

OGE Use Only

Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*: November 18 , 1987

Termination Date *(If Applicable)* *(Month, Day, Year)*:

Reporting Individual's Name	Last Name EZRA	First Name and Middle Initial DAVID A.
Position for Which Filing	Title of Position U. S. DISTRICT JUDGE	Department or Agency *(If Applicable)* FEDERAL JUDICIARY
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 220 S. King Street, 20th Floor Honolulu, Hawaii 96813	Telephone No. *(Include Area Code)* (808) 545-3030
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)* 11-19-87
Other Review **(If desired by agency)**	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

RECEIVED
CLERK, U.S. DISTRICT COURT
NOV 20 1987
DISTRICT OF HAWAII

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

278-109

NSN 7540-01-070-8444

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name		Page Number		Schedule
David A. Ezra	**Assets and Income**		2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

S or DC		BLOCK A Assets & Income Sources Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets Category of Value (X) None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income Type of Income (X) Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X) None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D Transactions Test If yes, complete Schd. B Part I for those assets including those sold for a loss. YES	NO
	Examples	X Y Z Common				x				x									x									
		Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000		x	
	1	American Savings Bank (Acct) Hon., HI				X						X							X									
	2	Territorial Savings & Loan (Acct.) Hon., HI					X					X							X									
	3	Ezra, O'Connor, Moon & Tam Common Stock Hon., HI							X				X			Salary						X			$411,000			
	4	State of Hawaii Hon., HI	X													Salary									$ 333			
	5	Plaza Landmark Apartment Hon., HI					X				X		X									X						
	6	Tamark, Inc. Common Stock Hon., HI		X									X				X											
	7	Individual Retirement Account			X							X						X										
	8	Ezra, O'Connor, Moon & Tam Profit Sharing Plan						X				X									X							
DC	9	CLA Trust Hon., HI				X															X							
	10																											

PREVIOUS EDITION USABLE

278-209

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name
David A. Ezra

Page Number	3	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example: Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/78 ptnership agmt.
Pursuant to employer stock redemption agreement, will receive payment for capital stock upon termination of employment, payable over 10 years; modified by agreement for payment over 3 years in the event Ezra is confirmed by U.S. Senate for U.S. District Judge Appointment.	Ezra, O'Connor Moon & Tam Honolulu, Hawaii	1986 Buy out agreement 1987 letter amendment

PREVIOUS EDITION USABLE

278-108

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name David A. Ezra	

Page Number	4	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	Ezra, O'Connor, Moon & Tam Honolulu, Hawaii	Law Firm	President	10/80	Present
	University of Hawaii, State of Hawaii, Honolulu, Hawaii	Non-profit education	Adjunct Professor - School of Law	1/78	Present

Part II
Compensation In Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith), Hometown, USA	Legal services in connection with university construction
	Ezra, O'Connor, Moon & Tam Honolulu, Hawaii	Legal Services

PREVIOUS EDITION USABLE

[illegible]

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]-0002

Page 1

Reporting Status *(Check Appropriate Box)*		Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*
☐ Incumbent	☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			November 18 , 1987

Termination Date *(If Applicable)* *(Month, Day, Year)*:

Reporting Individual's Name	Last Name EZRA	First Name and Middle Initial DAVID A.
Position for Which Filing	Title of Position U. S. DISTRICT JUDGE	Department or Agency *(If Applicable)* FEDERAL JUDICIARY
Location of Present Office	Address *(Number, Street, City, State and ZIP Code)* 220 S. King Street, 20th Floor Honolulu, Hawaii 96813	Telephone No. *(Include Area Code)* (808) 545-3030
Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*	Title of Position(s) and Date(s) Held None	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual	Date *(Month, Day, Year)*
Other Review **(If desired by agency)**	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

278-109

NSN 7540-01-070-8444

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Reporting Individual's Name
David A. Ezra

Assets and Income

Form Approved
OMB No. [illegible]

Page Number 2

Schedule A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)						Other (Specify Type)	Category of Amount of Income (X)								Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust		None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000			YES	NO
Examples	X Y Z Common				x				x									x									
	Doe Jones & Smith, Hometown, USA			x											ptnrshp income									$50,000		x	
1	American Savings Bank (Acct) Hon., HI																										
2	Territorial Savings & Loan (Acct.) Hon., HI				X						X							X									
3	Ezra, O'Connor, Moon & Tam Common Stock Hon., HI					X					X							X									
4	State of Hawaii Hon., HI							X				X			Salary												
5	Plaza Landmark Apartment Hon., HI	X													Salary						X			$411,000			
6	Tamark, Inc. Common Stock Hon., HI					X				X		X									X			$ 333			
7	Individual Retirement Account		X									X				X											
8	Ezra, O'Connor, Moon & Tam Profit Sharing Plan			X							X						X										
9 DC	CLA Trust Hon., HI						X				X								X								
10				X															X								

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	David A. Ezra

Page Number	3	Schedule	C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/78 ptnership agmnt.
	Pursuant to employer stock redemption agreement, will receive payment for capital stock upon termination of employment, payable over 10 years; modified by agreement for	Ezra, O'Connor Moon & Tam Honolulu, Hawaii	1986 Buy out agreement
	payment over 3 years in the event Ezra is confirmed by U.S. Senate for U.S. District Judge Appointment.		1987 letter amendment

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Page Number	4	Schedule D	

Reporting Individual's Name
David A. Ezra

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	Ezra, O'Connor, Moon & Tam Honolulu, Hawaii	Law Firm	President	10/80	Present
	University of Hawaii, State of Hawaii, Honolulu, Hawaii	Non-profit education	Adjunct Professor - School of Law	1/78	Present

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction
	Ezra, O'Connor, Moon & Tam Honolulu, Hawaii	Legal Services

PREVIOUS EDITION USABLE

278-100

FINANCIAL STATEMENT

NET WORTH

David A. Ezra

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	106	574	
U.S. Government securities—add schedule			
Listed securities—add schedule			
Unlisted securities—add schedule	304	000	
Accounts and notes receivable:			
Due from relatives and friends			
Due from others	63	859	
Doubtful			
Real estate owned—add schedule	300	000	
Real estate mortgages receivable			
Autos and other personal property	40	000	
Cash value—life insurance	4	000	
Other assets—itemize:			
Vested Profit Sharing	156	397	
Indv. Retirement Account	9	629	
Clifford Trust	30	000	
Oahu Country Club	7	500	
Total assets	1,021	959	

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	277	739	
Chattel mortgages and other liens payable			
Other debts—itemize:			
Total liabilities	277	739	
Net worth	744	220	
Total liabilities and net worth	1,021	959	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts	259	968	
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)			
Are you defendant in any suits or legal actions?			
Have you ever taken bankruptcy?			

ATTACHMENT TO CONFIDENTIAL FINANCIAL STATEMENT OF DAVID A. EZRA

Unlisted Securities

Common stock of Tamark, Inc.	$ 4,000.00
Common stock of Ezra, O'Connor, Moon & Tam	300,000.00
	$304,000.00

Real Estate Owned

Personal residence - Honolulu, Hawaii	$300,000.00

Real Estate Mortgages Payable

Territorial Savings & Loan (1st mortgage on personal residence)	$198,000.00
CLA Trust (3rd mortgage on personal residence)	30,000.00
Ezra, O'Connor, Moon & Tam (2nd mortgage on personal residence fee purchsed)	49,739.00
	$277,739.00

LAW OFFICES
EZRA, O'CONNOR, MOON & TAM
A LAW CORPORATION
TWENTIETH FLOOR, CENTRAL PACIFIC PLAZA
220 SOUTH KING STREET
HONOLULU, HAWAII 96813
TELEPHONE 808 545-3030

HILO, HAWAII OFFICE
SUITE 228 A, HILO LAGOON CENTRE
101 AUPUNI STREET
HILO, HAWAII 96720

SAN FRANCISCO OFFICE
235 MONTGOMERY STREET
RUSS BUILDING, SUITE 835
SAN FRANCISCO, CALIFORNIA 94104

FEDERATED STATES OF MICRONESIA
POST OFFICE BOX 1491
POHNPEI, CAROLINE ISLANDS 96941

FACSIMILE:
808 523-8051
CABLE ADDRESS
EOMLAW

March 22, 1988

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: Nomination for Appointment of David A. Ezra
U.S. District Court, District of Hawaii

Dear Mr. Chairman:

I just discovered and wanted to immediately call to your Committee's attention an unintentional omission from my response to Question No. 10 of your Committee's Questionnaire.

In reviewing my response to Question No. 10, I noted that my membership in the Plaza Club of Honolulu and the Oahu Country Club was inadvertantly omitted. Please understand that this omission was absolutely unintentional. Prior to the time I completed the FBI Questionnaire, I was informed by both the FBI and the Department of Justice that my responses to the FBI Questionnaire would be forwarded as part of the completed FBI report to your Committee in the event I was nominated. I of course listed my membership in the Plaza Club of Honolulu and the Oahu Country Club on the FBI form (as I had fully intended to do on the Senate Judiciary Questionnare) and it is my understanding the FBI has reviewed that membership.

Please accept my sincere apology for this mistake and I appreciate the opportunity to call this to your attention. Naturally, should you or your staff wish to discuss this or any other matter with me further, I will be available at their convenience.

Very truly yours,

David A. Ezra (gg)

DAVID A. EZRA

DAE:gg

cc: The Honorable Strom Thurmond

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

November 20, 1987

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: DAVID A. EZRA
United States District Court
for the District of Hawaii

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of David Ezra for appointment as Judge of the United States District Court for the District of Hawaii.

Our Committee is of the unanimous opinion that Mr. Ezra is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

SHANNON T. MASON, JR.

Birth:	December 13, 1933	Norfolk, Virginia
Legal Residence:	~~Colorado~~ Virginia	
Marital Status:	Married	Mary Louisa Fanshaw Mason four children
Education:	1952 - 1953 1956 - 1959	College of William & Mary Norfolk Division (now Old Dominion University) B.A. degree
	1959 - 1962	Marshall-Wythe School of Law B.C.L degree
Bar:	1962	Virginia
Military Service:	1954 - 1956	United States Army
Experience:	1962 - 1963	Law Clerk to Hon. Walter E. Hoffman, U.S. District Court Eastern District of Virginia
	1963 - 1971	Preston, Preston, Wilson & Mason Associate and Partner
	1972 - 1973	Sole practitioner
	1973 - 1978	Ferguson and Mason Partner
	1978 - 1987	Mason, Gibson, Cowardin & Spencer Partner
	1987 - present	Sole practitioner Newport News, Virginia
Office:	693 J. Clyde Morris Boulevard Newport News, Virginia 23601 804 599-8477	
Home:	1364 Moyer Road Newport News, Virginia 23602	

To be a U.S. District Judge for the Eastern District of Virginia

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   ANSWER: Shannon Taylor Mason, Jr.

2. Address: List current place of residence and office address(es).

   ANSWER:

   Residence: 1364 Moyer Road, Newport News, Virginia 23602. (804) 877-7179.

   Office: 693 J. Clyde Morris Blvd, Newport News, Virginia 23601. (804) 599-8477.

3. Date and place of birth.

   ANSWER: December 13, 1933, Norfolk, Virginia.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   ANSWER: Married to Mary Louisa Fanshaw Mason. Wife is unemployed.

5. Education: List each college and law school you have attended including dates of attendance, degrees received, and dates degrees were granted.

   ANSWER:

   1. Attended college at Norfolk Division of the College of William and Mary, now Old Dominion University. Dates of attendance were 1952 to 1953, (followed by a two year break for military service) and then from 1956 to 1959, graduating in May of 1959, with a Bachelor of Arts degree, Major in History.

   2. Marshall-Wythe School of Law of the College of William & Mary, Williamsburg, Virginia, 1959 to graduation in February of 1962, with a Bachelor of Civil Law (BCL) degree.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

ANSWER:

1. Following graduation from Old Dominion University in June of 1959, I worked in various sections of the National Bank of Commerce (now Sovran Bank) in Norfolk, Virginia. I served as a roving teller, and had also worked in the Print Shop of the bank under the supervision of Harold Johnson.

2. Commencing in August of 1959, I attended law school at the Marshall-Wythe School of Law, College of William & Mary, Williamsburg, Virginia. Initially I was not employed; commencing in the time frame of 1960 I worked as a part-time supervisor at the Campus Center of the College of William & Mary, my immediate superior being Jack Sturgill.

3. Upon graduation from law school in January of 1962, and continuing through January of 1963, I worked as a law clerk for Judge Walter E. Hoffman, United States District Court, Eastern District of Virginia, 600 Granby Street, Norfolk, Virginia.

4. From January of 1963 and through December of 1971, I was initially an associate, and later a partner, in the law firm of Preston & Preston, later named Preston, Preston, Wilson & Mason. During the latter portion of that relationship, the firm had offices in the National Bank of Commerce, One Commercial Place, Norfolk, Virginia, and at 84 30th Street, in Newport News, Virginia.

5. For the year 1972, I was a sole practitioner, with my offices at the F & M Bank Building, 2600 Washington Avenue, Newport News, Virginia.

6. From January 1, 1973 to January 1, 1978, I practiced law as a partner in the firm of Ferguson and Mason, involving me and William McL. Ferguson (now deceased), the office being located at 225 - 28th Street, Newport News, Virginia.

7. From January 1, 1978 to June 1, 1987, I practiced law as a partner in the law firm (various members)

which in its last form was Mason, Gibson, Cowardin & Martin, at 693 J. Clyde Morris Boulevard, Newport News, Virginia.

8. Commencing June 1, 1987 and continuing to the present, I am a sole practitioner, at 693 J. Clyde Morris Boulevard, Newport News, Virginia.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

ANSWER: Yes. From 1954 to 1956, I served in the United States Army, reaching the rank of SP-4, serial number US 52358440, receiving an honorable discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

ANSWER: While attending undergraduate school, I believe I was the beneficiary of some small stipend applied toward tuition; of this I cannot be positive. While attending law school, I received funds in the form of a scholarship from the Lincoln Foundation, a trust administered by two lawyers in Norfolk, Virginia, now both deceased. I served as an editor of the William and Mary Law Review, and was first in class standing at the time of graduation.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

ANSWER:

1. Virginia State Bar, 1962 to present. In the State Bar I have served in at least three areas:

   a. For a period of three years, starting in 1976, I served on the District Committee for the First District, that committee being for the purpose of sanctioning lawyers for ethical violations. In 1979, I served as chairman of that committee.

b. For three years, from 1981 to 1984, I served as an officer of that section of the Virginia State Bar designated the Conference of Local Bar Associations, and in my last year (1984), I served as President.

c. Since 1982, with two three-year appointments (appointed in 1982 and re-appointed in 1985), I have been a member of the Disciplinary Board of the Virginia State Bar, appointment to that body being by the Supreme Court of Virginia.

2. I have been and am a member of the Newport News Bar Association; in 1981 I served that organization as President.

3. I am now and have been a member of the Tidewater Chapter of the Federal Bar Association; at the present time, I am serving as President, my term expiring in late January, 1988.

4. I am now and, for the past several years, have been a member of the Virginia Bar Association.

5. In years past, while practicing in Norfolk (20 years ago) I was a member of the Norfolk-Portsmouth Bar Association.

6. I am now and, for some years, have been a member of the American Bar Association.

7. I am a member of the Virginia Association of Defense Attorneys.

8. I am a member of the Defense Research Institute, Inc.

9. I served on the State Bar Council of the Virginia State Bar (1984).

10. In 1987, I became a Master of the Bench - American Inn of Court in Virginia.

11. For some years I have been a member of the Peninsula Claim Association, an organization primarily comprised of insurance adjusters and investigators and groups associated with claims work.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

ANSWER:

1. I am not now, nor have I ever been, a member of any organization active in lobbying before public bodies.
2. During the period of 1976 to 1984, I served on the Board of Visitors of Old Dominion University, serving as Vice-Rector from 1982 to 1984.
3. I am a member of the Old Dominion University Alumni Association, and a former board member and President of that organization.
4. I am a member of Hidenwood Presbyterian Church, Newport News, Virginia.
5. For a period of approximately two years (1982 to 1985), I was a member of the Town Point Club in Norfolk, Virginia.
6. I am a member of the Hampton Roads Assembly, a social organization meeting four times per year on the Hampton-Newport News Peninsula.
7. Since 1971, my family has been a member of the James River Country Club, Newport News, Virginia.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

ANSWER:

1. All State Courts in the Commonwealth of Virginia, since February 26, 1962, without lapse.
2. United States District Court for the Eastern District of Virginia, 1963, without lapse.
3. United States Court of Appeal for the Fourth Circuit, October 5, 1979, without lapse.
4. Supreme Court of the United States of America, February 19, 1980, without lapse.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you

have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

ANSWER: Although I served as an editor of the William and Mary Law Review, and performed the services of "editing" some of the material submitted to the Law Review, and although I wrote a small "note" while in law school which was published in the Law Review, I do not consider this truly "published material." Other than that small effort, I have not had any published material, and I have not given any speech associated with the issues of constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

ANSWER: I understand my health to be very good. On May 2, 1984, I was given a full physical examination by my then family doctor, John M. Quarles, 12 Bruton Avenue, Newport News, Virginia 23601 (804) 595-5236. In July of 1987, for purposes of obtaining life insurance, a physical examination was performed under the supervision of Dr. Jack Kasdin; that examination included blood pressure, heart, urinalysis, etc. I am advised that I passed the examination quite well. My last physical examination was conducted on December 23, 1987, at Sentara Medical Care Center, 747 J. Clyde Morris Boulevard, Newport News, Virginia 23601, (804) 599-6117; most knowledgeable person would be Sharon Norris, R.N., MS, CFNP.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such Court.

ANSWER: Commencing in February 1972, and continuing for a period of approximately 14 years thereafter, I was appointed and re-appointed to serve as Substitute Judge of all Courts not of record in Newport News, Virginia. Those Courts included Criminal, Traffic and Civil General District Courts, and the Juvenile and Domestic Relations Court.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism

of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

ANSWER: While serving as a substitute judge for the lower courts (courts not of record) over a period of approximately 14 years in Newport News, Virginia, I did not offer any "opinions." The nature of the role of a substitute judge in those courts does not require the issuing of written opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies or elective public office.

ANSWER: I have never sought nor held any public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

ANSWER: From February 1962 to January 1963 I served as law clerk to Judge Walter E. Hoffman, United States District Court for the Eastern District of Virginia, 600 Granby Street, Norfolk, Virginia.

2. Whether you practiced alone, and if so the addresses and dates;

ANSWER: I have been a sole practitioner on two brief occasions only:

a. For a period of one year (1972 to 1973) I practiced alone at

the First & Merchants Bank Building
2600 Washington Avenue, Newport News
Virginia.

b. Then, commencing in June of 1987 to the present time, I have been a sole practitioner at 693 J. Clyde Morris Boulevard, Newport News Virginia; from the period of June to December of 1987, although I was deemed to be practicing "alone" I still shared the building with my former law partners, that firm being designated Mason, Gibson & Martin.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

ANSWER: From February 1962 to January 1963, I served as law clerk to Judge Walter E. Hoffman in the United States District Court for the Eastern District of Virginia, Norfolk, Virginia.

I commenced practice in 1963 with the Norfolk law firm of Preston & Preston, later Preston, Preston, Wilson and Mason, that firm having offices in Norfolk and Newport News, Virginia. The Norfolk address was formally in the old Royster Building, but was thereafter moved to One Commercial Place (now Sovran Bank) in Norfolk, before the firm agreeably dissolved; I practiced at 84 - 30th Street in Newport News, and later at Suite 614 of the First & Merchants Bank Building in Newport News, Virginia, that being for a period of approximately five years.

Commencing in 1973, and continuing through 1978, I was in partnership, with William McL. Ferguson, under the firm name of Ferguson and Mason, with offices located at 225 - 28th Street, Newport News, Virginia.

In 1978, until June of 1987, I practiced with the partnership initially named Mason, Gibson, Cowardin & Spencer, at 693 J. Clyde Morris Boulevard, Newport News, Virginia. That law firm, with modifications in personnel, continued at the same address until June of 1987. Since June of 1987, I have been practicing as a sole practitioner at the address of 693 J. Clyde Morris Boulevard, Newport News, Virginia.

b. 1. What has been the general character of your law practice, dividing it into periods with dates, if its character has changed over the years.

ANSWER: For the past 25 years, the general character of my practice has remained substantially the same; I have been a lawyer presenting the interests of insurance carriers and self-insured companies, in the defense of claims brought against insureds. It has been one of a tort-oriented trial practice. In addition, I have done some of the "general" practice, including divorce, business, lower court claims, etc. including Traffic and Criminal Court. For the past 10 or 12 years, I have served as local counsel to Newport News Shipbuilding and Dry Dock Company, providing to me broad exposure in certain areas of representation and trial work, wherein a corporation of that size has unique and interesting legal problems.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER: In addition to insurance carriers (Allstate Insurance Company, Colonial Insurance Company of California, self-insureds, etc.) I believe I may have "specialized" as a litigator; trial work associated with tort liability, automobile, slip-and-fall, and litigation associated with corporate interests.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

ANSWER: Frequently, without significant variance.

2. What percentage of these appearances was in:

(a) federal courts - approximately 10 per cent.

(b) state courts of record - approximately 90 per cent.

(c) other courts - approximately 1 or 2 per cent.

3. What percentage of your litigation was:

   (a) civil - almost 100 per cent.

   (b) criminal - perhaps 1 per cent.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled) indicating whether you were sole counsel, chief counsel, or associate counsel.

   ANSWER: In an effort to review my appointment books for the years 1982 to the present, and recognizing that there may be some inaccuracies, those books suggest that I have had civil cases set for trial before a jury totaling 305. During the same period (accuracy is difficult) cases were actually tried to verdict on approximately 28 occasions, some being cases lasting more than one day. In all, or almost all of those cases, I would be serving as sole counsel or chief counsel. In the greater number of cases, I would be sole counsel.

5. What percentage of these trials was:

   (a) jury - 99 per cent

   (b) non-jury - perhaps 1 per cent.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    (a) the date of representation;
    (b) the name of the court and the name of the judge or judges before whom the case was litigated, and
    (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER:

Response to this question is difficult in a precise fashion. It would exclude reference to many of those cases, over a period of 25 years, which have constituted the heart of my practice and experience. However, through those cases, I hope to have developed and acquired skills in factual and legal analysis, evidentiary issues, and an "ear" for evidence, its evaluation and probative quality. In addition perhaps I have obtained some maturity and balance within the Courtroom environment. Those cases selected below may, in addition to the regular cases associated with a trial practice, give some indication of a wider experience in my litigation training.

1. From 1977 through 1982, I served as co-counsel for the Newport News Shipbuilding and Dry Dock Company (NNS) in that mass of Asbestos litigation pending in the United States District Court for the Eastern District of Virginia, designated as C/P 77-1. On behalf of NNS, who was designated as a Third-Party Defendant, the cases involved expansive investigation and tracing of information over many years, and the organization of that information and developing it towards admissible evidence. There was the usual extensive use of depositions and discovery procedures. Ultimately, on appeal to the Fourth Circuit Court of Appeals, NNS was dismissed as a party to the litigation. Co-counsel with me were Stephen B. Clarkson, Pierson, Ball & Dowd, 1200 - 18th Street, N.W., Washington, D. C. (202) 331-8566, and Antje E. Huck, Legal Department Newport News Shipbuilding and Dry Dock Company, 4100 Washington Avenue, Newport News, Virginia 23607 (804) 380-7157. Other attorneys involved were:

   a. Robert R. Hatten, Attorney for Plaintiffs, 739 Thimble Shoals Boulevard, Suite 105, Newport News, Virginia 23606 (804) 873-1881.

   b. Richard S. Glasser, Attorney for Plaintiffs, 125 St. Paul's Blvd, Suite 400, Norfolk, Virginia 23510, (804) 625-6787.

   c. There were multiple (a dozen or more) attorneys representing the interest of the various defendants in the litigation.

2. OSHA cases (Occupational Safety and Health Act) involving Newport News Shipbuilding & Dry Dock Company arose approximately 15 years ago, and thereafter for a period of approximately five years

were rather frequent pieces of litigation. In the initial phases, I served as primary counsel, along with my then law partner William McL. Ferguson. The cases were tried before administrative law judges, and in my view they represented significant portions of my legal experience because they introduced me to new legislation, and the review and analysis of Regulations set forth by governmental bodies, including the viability of such regulations under the Administrative Procedures Act. In later cases, I worked as co-counsel with Robert Mann, of the Chicago firm of Seyfarth, Shaw, Fairweather & Geraldson, 55 E. Monroe Street, Chicago, Illinois 60603, (312) 346-8000. Counsel for the government in these proceedings was varied. The names of the administrative law judges are not specifically recalled. I mention these cases as being significant, for it afforded me an opportunity to work with new and different law, and with representatives of major law firms thereby obtaining, by osmosis, the benefit of their more expanded experience and training.

3. Melba S. Clark vs. Carolina Coach Company, was a most interesting case in which I served as counsel for the plaintiff, in a suit filed on or about Nov. 15, 1985 in the Circuit Court for the City of Norfolk, Virginia, bearing law docket number L85-2353. Facts and law were interesting; plaintiff Clark boarded a Carolina Trailway bus in Goldsboro, North Carolina, her destination being the Trailway Bus Station on Main Street in Norfolk, Virginia. Upon arrival at her destination, and while awaiting her luggage, she used the toilet facilities on the second floor; while using the toilet facilities, she was attacked and sexually assaulted. Issues involved her status at the time of the assault (still a "passenger" or merely an "invitee"), and significant issues of medical evidence; many months after the assault, and when AIDS became prevalent in national news coverage, the plaintiff developed a fear of having acquired, via the rape, AIDS or some similar sexually transmitted disease. Motions were filed, briefs filed and argued, etc. Multiple Motions In Limine were filed. Motions for Summary Judgment were filed and argued. The case was settled on the morning of trial. The trial judge was John Clarkson. Counsel for the defendant was John R. Crumpler, Jr., Kaufman & Canoles, P. O. Box 3037, Norfolk, Virginia 23514, (804) 624-3000.

4. Shell Oil Company vs. Newport News Shipbuilding & Dry Dock Company, et als., was litigation filed in 1981, with companion litigation filed in 1982, in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 81-1074-R and Civil Action No. 82-0332-A-R, the trial judge being Robert Merhige. I served as co-counsel for the Shipyard, with Donald C. Holmes, with Jones, Day, Reavis & Pogue, 655 - 15th Street, N.W., Washington, D. C. 20005-5701, (202) 879-3829. Counsel for Shell Oil was Grant B. Herring, of Cadwalder, Wickersham and Taft, One Wall Street, New York, New York 10005 (212) 908-7000. The litigation involved massive document accumulation, photographing and indexing such exhibits, cataloging, and organization. It provided, again, an opportunity for me to participate, as co-counsel, in the development and maturing of a large piece of litigation. After numerous hearings, the matter was ultimately disposed of by settlement.

5. Caroline Scott Ellington, d/b/a Scott Interiors v. Williamsburg Vacations, Inc., Kay F. Gow, Robert T. Gow, et als., Civil Action No. 86-38-NN, was filed in the United States District Court for the Eastern District of Virginia, Newport News Division in the Spring of 1986. I was sole counsel for the defendants Williamsburg Vacations, Inc., Kay F. Gow and Robert T. Gow. Other counsel involved were Judith M. Cofield, Pembroke Office Park, Pembroke One - Suite 525, Virginia Beach, Virginia 23462, (804) 499-8971; Kiran H. Mehta, Counsel for the plaintiff, Kennedy, Covington, Lobdell & Hickman, 3300 NCNB Plaza, Charlotte, North Carolina 28280 (704) 377-6000. Other attorneys involved were Hunter W. Sims, Jr. and Stephen E. Story of Kaufman & Canoles, 900 Sovran Center, Norfolk, Virginia 23514 (804) 624-3000. Robert A. Boester, 29 N. King's Way, P. O. Drawer A, Hampton, Virginia 23669, (804) 722-7473 represented the interest of Resort Condominium Interiors and Gordon Pollok, two of the defendants. The litigation was intriguing, for it represented a combination of oral/written contract agreements and conflicts therein. After preliminary discovery and investigation, the matter was resolved by compromise approximately six months after the commencement of the litigation.

6. Root, Administrator of the Estate of Solomon v. Virginia, was an interesting case, involving potential application of foreign law. The lawsuit was commenced in the Circuit Court for the City of Newport News (Law Docket No. 11367-WS) in early November of 1986; it arose out of an automobile accident and death occurring in West Germany. Counsel for the plaintiff was C. Arthur Rutter, Jr., 720 Atlantic National Bank Building, 415 St. Paul's Boulevard, Norfolk, Virginia 23510 (804) 622-5000. I was counsel for the defendant Virginia, and had assistance from Attorney Helmut Eifert, of the law firm of Masuda, Funai, Eifert & Mitchell, Ltd., 134 N. LaSalle Street, 17th Floor, Chicago, Illinois 60602, (312) 977-9500. I was representing the interest of the insurance carrier for Virginia, that company being Lloyd's of Germany.

   Upon my motion, the case was removed to the United States District Court for the Eastern District of Virginia, Newport News Division, being Civil Action No. 86-207-NN. The intriguing portion of the case involved receiving translations of the German Code presumably applicable to the case; questions of Conflict of Laws; development of evidence in a foreign country, etc. There was the customary pre-trial discovery. After one year of litigation, the case was settled with court-approval of the death settlement being handled by Judge Robert G. Doumar of the United States District Court.

7. In two related State court cases, I served as sole counsel for the owners of certain apartment complexes. Judith Ann Erk vs. Great Atlantic Management Company, Law Docket No. 9835-WS was in the Circuit Court for the City of Newport News, the plaintiff there being represented by Howard P. Smith, 2100 Kecoughtan Road, P. O. Box 1437, Hampton, Virginia 23661-0437, (804) 247-6368, and G. Curtis Overman, 739 Thimble Shoals Boulevard, Suite 507, Newport News, Virginia 23606, (804) 873-1188. Counsel for the co-defendant was Henry C. Morgan, Jr. and Breckenridge Ingles, 192 Ballard Court at Greenwich Road, Virginia Beach, Virginia 23462, (804), 490-3000. A similar case was Newman vs. Great Atlantic Management Company, Law Docket No. 9749-WS, in the Circuit Court for the City of Newport News. Counsel for the plaintiff there was Thomas B.

Shuttleworth, 2809 S. Lynnhaven Road, Virginia Beach, Virginia 23462, (804) 431-3100 and Mona B. Shapiro, Suite 525, One Columbus Center, Virginia Beach, Virginia 23462, (804) 490-2244. Each case involved the assault and rape of separate tenants in the same apartment complex, but at different times under different fact situations. The effort of the plaintiffs to develop some theory of liability represented a legal challenge, trying to take advantage of the Virginia Landlord and Tenants Act. As these cases were maturing, similar cases were developing around the Commonwealth. The case of Newman was settled on the second or third day of trial, but by that time my client had been non-suited from the litigation. The case of Erk was still pending when there was received from the Virginia Supreme Court the decision in Klingbeil, et als. v. Vito, an opinion significantly restricting the liability of an apartment owner regarding the duty owed to a tenant. This precipitated the settlement of the Erk case; the significance of the two pieces of litigation, to me, represented an interesting and imaginative fact development, running parallel to some of the various decisions throughout the State of Virginia, leading up to the Klingbeil decision in the Supreme Court.

8. Brian K. Baker vs. Newport News Shipbuilding and Dry Dock Company, Law Docket No. 10268-FB, in the Circuit Court for the City of Newport News, before Judge Fred W. Bateman. Counsel for the plaintiff was Frederic L. Moschel, 2236 Cunningham Drive, Hampton, Virginia 23666, (804), 827-9207. I served as co-counsel with Antje E. Huck, Legal Department, Newport News Shipbuilding and Dry Dock Company, 4101 Washington Avenue, Newport News, Virginia 23607, (804) 380-7157. The case involved the alleged "wrongful discharge" of a supervisor at the Shipyard. Again it was a case requiring factual and documentary development but was particularly of concern as it related to the uncertain question of employment "at will" in the Commonwealth of Virginia. After discovery processes, several Requests for Admissions were prepared and aimed at the question of trying to determine, as a matter of law, that the claimant was an employee "at will", subject to being discharged by the Shipyard regardless of the factual allegations. These Requests for Admissions were formulated into a Motion for Summary Judgment,

were heard by the Court, and the Motion for Summary Judgment granted, a procedure not frequently produced within the State Courts of Virginia. The Motion for Summary Judgment was granted by Judge Bateman on November 30, 1987, and as an interesting aside the Supreme Court of Virginia had clarified the issue of "at will" of employment in an immediately recent Supreme Court decision (Miller v. SEVAMP, Inc., Lawyer's Weekly, F-133, 2 VLW 259) which was not available to counsel or the Court at the time of argument.

9. Rilee vs. Newport News Shipbuilding and Dry Dock Dock Company, et als., Law Docket No. 8894-S, was filed in January 1984 in the Circuit Court for the City of Newport News, and assigned to Judge Douglas M. Smith. I primarily represented the interest of the defendant Shipyard, with co-counsel Antje E. Huck. W. Vinton Hoyle, Jr., 6147 Jefferson Avenue, Newport News, Virginia 23601, (804) 826-6675 represented the plaintiff. The case was interesting because it involved a "probationary" employee and the basic issue of whether or not he had, by a matter of a day or two, passed beyond his probationary period, which would have given to him certain job security and procedural rules associated with discharge or discipline. The plaintiff Rilee was a member of the firefighters of the Shipyard, was not the beneficiary of any "union" agreement, but the firefighters had been "treated" in the same group as security guards, which did possess certain rights exercised through a bargaining unit. Principles of union contracts, and interpretations of informal handling of employees in the Shipyard surrounded the case. Much discovery was undertaken; the case was tried, after two of trial, with the jury assessing damages against the Shipyard. It was an interesting case where the facts varied greatly among witnesses. It had the involvement of an "expert" witness. I feel the case had significance in terms of development of unique facts, and the law, and the ultimate trial of the case before the jury.

10. Two cases in the Federal Court are identified internally within my office as DCAA #1 and DCAA #2. Both cases, involving similar principles contained the question of whether or not an agency of the federal government (Defense Contract Audit Agency) was entitled to receive from the Newport News Shipbuilding and Dry Dock Company:

a. Copies of internal audits, and
b. Copies of tax returns.

The first case (Miscellaneous number 87-5-NN) in the United States District Court for the Eastern District of Virginia has been argued on appeal in the Fourth Circuit, and we are now awaiting the ruling of that panel. The second case, (87-33-NN), was heard by Judge J. Calvitt Clarke, Jr. of the United States District Court. In each of those cases I was serving as subordinate counsel with John G. DeGooyer, Hamel & Park, 888 Sixteenth Street, N.W., Washington, D. C., (202) 835-8262. The United States Government was represented in each case by David M. Souders, Department of Justice, Civil Division, Room 3513, 9th & Pennsylvania Avenue, N.W., Washington, D. C. 20530, (202) 633-3495. Both cases have significance in that they test the breadth of the statutory and rule authority of a US governmental agency. Statutory history and analysis is present in the cases, and they represent an intellectual challenge to the "intent" behind the legislation involved and companion legislation potentially applicable.

11. Leola Maxine Sheffer v. Newport News Shipbuilding & Dry Dock Company v. H. K. Porter Company, Inc. et als., Law Docket No. 6419-S, In the Circuit Court for the City of Newport News. This unique case involved the wife of a former shipyard employee who alleged that her husband came home from work with asbestos dust on his clothing; she shook out the dust, she washed his clothes, etc. and as a result thereof she had contracted mesothelioma, a cancer produced by asbestos. At that time it was not documented that such indirect and limited exposure to asbestos could produce such a result. Substantial work was done of a medical nature tracing this possibility; in addition on site investigation was undertaken at Harrisonburg, Virginia, where the plaintiff resided, and where she had resided twenty years before. Imaginative and investigative efforts were made to undermine plaintiff's claim that the source of her illness resulted from asbestos exposure transported home by her husband. After three years of litigation, the case was compromised by settlement. Counsel in the case involved Robert Hatten and Richard Glasser on behalf of the plaintiff, with a selective list of other counsel being:

a. Archibald Wallace, III
Sands, Anderson, Marks & Miller
P. O. Box 1998
Richmond, Virginia 23216

b. William V. Hoyle, Esq.
Hoyle, Corbett, Hubbard & Smith
6147 Jefferson Avenue
Newport News, Virginia 23601

c. Robert L. O'Donnell
Vandeventer, Black, Meredith & Martin
500 World Trade Center
Norfolk, VA 23510

Along with Antje E. Huck, I served as primary counsel for the defendant Newport News Shipbuilding and Dry Dock Company.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege, (unless the privilege has been waived.)

ANSWER: If "significant" as used in this question tends to imply a lawyer guiding or otherwise handling "a big deal" outside of the parameters of litigation, then I am not sure that I can give a list of such achievements. As a litigator, much of my work involves cases in which either litigation already has been commenced or is imminent. For that reason, my training and experience has been largely associated with the assertion or defense of a claim in a court of law, and not with pre-litigation activity. I feel compelled to add that to me "significant" might well mean little cases, handled over the years, often without fee, when someone needed assistance and otherwise could not afford to hire an attorney. Many lawyers, and I include myself in that category, have these types of clients...those people of good heart who migrate across the mine fields of life, and who often need help although unable to afford it. Having satisfied those people and my own perceptions of professional propriety, I frequently look upon those small things as being "significant legal activities." Also, I would like to think that my years of voluntary participation in Bar activities at State and local levels, represent significant legal activity. (At the moment, I am serving on two projects of the Risk Management Committee of the City of

Newport News. In that capacity, and over many years, when called upon I have reviewed claims brought against the city, along with other citizens of this city, in an effort to evaluate the exposure in tort litigation. This I do without charge, and take pride in having been selected to serve on such a Committee and deem it to be a small contribution which I make, as a lawyer, to the welfare of my community.)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.--

ANSWER:

A. Until mid-February, 1988, I was a one-third owner (along with two former law partners) of business property located at 693 J. Clyde Morris Boulevard, Newport News, Virginia, in which property I now maintain my practice. That property has now been sold. It is identified here, although sold, because it was previously identified in certain documents prepared in association with this pending judgeship. It was known as MAGICO, and references to the word MAGICO refer to this piece of property formerly owned.

B. I do not possess any stocks, or assets which otherwise might be productive of future benefits.

C. I would not expect any future benefits from professional services rendered, as it would be my intention to close and "bill out" all files prior to commencing the role of a federal judge, if selected. An exception to that rule may be one or two pending cases in which some future fee might be derived, but which would require future activity in which I could not participate due to judicial responsibilities. In such event, I would contemplate seeking the client's agreement to have another lawyer continue forward in the case, carrying it to a conclusion, with some satisfactory arrangement whereby I could "share" in the fee ultimately derived, based upon a ratio of the working responsibility previously undertaken by me and that to be undertaken by some lawyer in the future.

D. Approximately 9 years ago, my then law partner Wayne Spencer, and one or two others, were instrumental in forming a Limited Partnership associated with the acquisition of and development and/or sale of certain land in Newport News; the land was located in the section of the City known as Lee Hall, and a Limited Partnership was formed with five persons serving as general partners, the enterprise being under the name of Lee Hall Land Company. I was and am one of the five general partners. In that capacity, I have participated in a very limited way in discussing with the general partners options for the use and/or disposition of the property. My interest I believe to be 2 1/2 per cent. At the present time, it pays to me approximately $113 monthly. Those more knowledgeable of the enterprise are:

1. Former law partner Wayne R. Spencer
   690 J. Clyde Morris Blvd
   Newport News, VA 23601
   (804) 595-5000

2. Former law partner William C. Cowardin, Jr.
   11832 Rock Landing Drive, Suite 101
   Newport News, VA 23606
   (804) 873-2342

a. Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and confirmed? If not, give reasons.

ANSWER: I have not given consideration to this; if it is appropriate that I withdraw myself from any such management responsibility with Lee Hall Land Company, obviously I would resign such position immediately upon nomination and confirmation as Judge of the United States District Court. I would not, unless required, want to surrender my 2 1/2 per cent interest in the venture.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

ANSWER: Except as identified in question number one above, I am unaware of any potential conflict of interest which might arise because of financial arrangements in which I may have been involved in the past. If so, they could be clearly identified, and I could remove myself from any litigation involving those interests or parties participating. As to former clients, standard requirements would suggest that I recuse myself in the event, after full disclosure there was any potential for the appearance of conflict-of-interest. Over the years I have represented, on a regular basis, Newport News Shipbuilding and Dry Dock Company, one of the industries in Newport News, Virginia. That corporation is frequently a litigant within the federal courts of the Eastern District of Virginia. It would seem to me wise, at least during my initial service in the position of a federal judge, not to become involved, directly or indirectly, in any litigation which might impact upon Newport News Shipbuilding and Dry Dock Company, either as a direct party to litigation, or as an entity who might have a primary interest in the outcome of any such litigation. Customary procedures for determining areas of potential conflicts would be followed, including an analysis of the parties, non-litigants who might be affected by the litigation, and reference to established guidelines for avoiding conflict of interest; inquiry into potential conflicts such as Statutes governing disqualification, knowledge of critical facts, financial implications, family interest in property subject to court decision, potential for being a witness, etc. In any event, where any such conflict occurs or might be perceived to be present, I would recuse myself from any litigation, and request that other judges sitting in the jurisdiction handle such litigation.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   ANSWER: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   ANSWER: My source of income for the calendar years 1985, 1986, and 1987 are attached hereto as an exhibit. Those are almost exclusively the product of fees earned through my practice of law. In addition, through rents received for the rental of a portion of the property at 693 J. Clyde Morris Boulevard, I am advised that during the year 1986 the total rents received were $43,056.84, representing an amount over expenses of $1,993.08. For the year 1987, the rents generated would be $31,670.10, with the amount over expenditures being $1,232.99. The property is owned by three people, and therefore my proportionate share would be one-third of those amounts.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

   ANSWER: See attached documentation.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   ANSWER:

   a. In approximately 1983, William Haskins, a member of the City Council of Newport News, ran for a seat in the State Senate, his opponent being incumbent Senator Robert Scott. For a period of approximately three months, I served (title unknown) as a party who would assist in fund raising. This primarily consisted of writing letters to local community leaders, having one or two breakfast sessions, and any funds received would be delivered to the appropriate treasurer for the candidate. I did not "handle" or "account" for any of the funds received, merely turning them over to the appropriate party within the campaign. It is my judgment that this informal role lasted approximately three months, and candidate Haskins was defeated.

      In the period of October 1985, and in a less active fashion, I briefly worked in conjunction with Dr. Harold Williams to try to be of assistance in Newport News, Virginia, to the raising of funds for William R. "Buster" O'Brien, who was then a candidate for Attorney General. Those efforts were limited to a single social gathering at the home of Dr. Williams, in which Dr. Williams and I tried to invite influential people to seek from them a donation. Again, I received none of the funds, and did not handle any funds; presumably Dr. Williams forwarded them on to the appropriate treasurer for Mr. O'Brien. Those efforts were brief, and only one function occurred.

FINANCIAL STATEMENT FOR
SHANNON T. MASON, JR. AND MARY LOU MASON
EFFECTIVE JANUARY 20, 1988

HOME ADDRESS:

1364 Moyer Road
Newport News, VA 23602
Tel: (804) 877-7179

BUSINESS ADDRESS:

693 J. Clyde Morris Blvd
Newport News, VA 23601
Tel: (804) 599-8477

ASSETS (In Dollars)

Cash on hand and on deposit	$ 32,000
Real Estate	
Private Residence on Moyer Road	250,000
One-third interest in office located at 693 J. Clyde Morris Boulevard	30,000
Automobiles owned (Three)	33,000
Personal Property	40,000
2 1/2 Percent interest in Lee Hall Land Company	15,000
Work in Progress	60,000
TOTAL ASSETS	$460,000

LIABILITIES (In Dollars)

First Deed of Trust (Residence)	$ 4,400
Second Deed of Trust (Residence)	81,000
First American Bank (1985 Peugeot, secured by title lien)	11,000
Signet Bank (1985 Ford Escort, secured by title lien)	1,850
J. I. Case (Note for purchase of tractor)	2,318
Signet Bank (Note)	3,000
Master Card	3,700
Miscellaneous	1,200
TOTAL LIABILITIES	$108,468

NET WORTH (Excess of assets over liabilities) $351,532.00

CONTINGENT LIABILITIES

1. There are no liabilities now past due.
2. There are not now, nor have there ever been, any judgments taken against me.
3. I have never been a defendant in any suits or legal actions aimed at collection procedures.
4. I have not been through a bankruptcy or made a compromise settlement with creditors.
5. My wife and I have joint Wills; she is designated as Executrix of my Will, and I of her Will.
6. We have no assets that are pledged.
7. The only contingent liability I have as an endorser, co-maker or guarantor, relates to a 1985 Ford Escort, which has been identified under LIABILITIES.

Shannon T. Mason, Jr.

Mary Lou Mason

Mary Lou Mason

ATTACHMENT
SOURCE OF INCOME FOR CALENDAR YEARS 1985, 1986, 1987

1985 -	Law Practice	$ 103,884
	State of Virginia	[illegible]
	MAGICO	[illegible]
	Lee Hall Land Company	1,326
1986 -	Law Practice	138,909
	MAGICO	672
	Lee Hall Land Company	1,210
1987 --	Law Practice	183,044
	MAGICO	411
	Lee Hall Land Company	1,356

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

ANSWER: Some 15 or 20 years ago, I participated in efforts by the Newport News Bar Association, on a voluntary basis, to provide legal service to disadvantaged people. We met with the disadvantaged, counseled them, often served as lawyer to resolve domestic disputes, landlord-tenant problems, etc. That was on a rotating basis (such as one afternoon per week or perhaps one afternoon every two weeks) and I cannot recall the time frame in which this service was provided. It was subsequently phased out and replaced by formal assistance, such as Legal Aid. Since that time, I can only state that I have, on an informal basis, and without records, tried to give service to those who sought me but who could not, at that time, afford the cost of legal fees for the nature of the problem they then had. Certainly such does not reach large proportions, and was sporadic and on limited basis. My doors have never been closed to such people however. Further, although it may not represent service to the "disadvantaged" I cannot help but comment that I have given much time to my profession, serving on bar associations, serving on disciplinary boards, local committees, etc. The amount of time devoted to such worthwhile activity, in my judgment, represents some contribution that I feel towards my society beyond that of processing of a client's problems, litigation, and fee-oriented practice.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

ANSWER: At the present time, I am a member of the James River Country Club in Newport News, Virginia, and have been in that country club for approximately 16 years.

I have never participated in any committee activity passing upon or rejecting any applicant for membership. I am unaware of any formal membership requirement regarding race or religion. Women are members. As to racial or religious minorities, I can only say that I am unaware of any such members in the club, although I have been told that there are Jewish members. I am also a member of the Hampton Roads Assembly, a social organization, whose purpose is to have four social functions a year. The process of joining or electing members is unknown to me. I have never been to one of the meetings where such was undertaken. I am unaware of any Blacks in this organization. For approximately two years, I was a member of the Town Point Club in Norfolk, Virginia, and it is my feeling that minorities are in fact members of that club. At no time have I ever participated in any effort, directly or indirectly, to advocate or support any such policy of discrimination if it in fact exists.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER: There is not a specific "selection commission" in my jurisdiction to recommend candidates for nomination to the federal courts. When such vacancies occur, it is customary for local bar associations to meet and endorse or recommend candidates for the vacancy. In my jurisdiction it would include the bar associations of Newport News, Hampton, York County, Williamsburg/James City County, and the Old Dominion Bar Association, comprised predominantly of Black attorneys. My name has been recommended for nomination on two occasions; one in the past (approximately two years ago) when my name was one of three submitted by Senator John Warner. On that occasion each of those bar associations recommended me, and no other, for the vacancy. In the most recent occasion when my name was submitted by Senator Paul S. Trible, there was no convening of those bar associations, and it is presumed that Senator Trible was acting upon the earlier endorsements made. On the two occasions in which my name has been submitted, the only parties with whom I met and conducted interviews were Senator John W. Warner and Senator Paul S. Trible, and various representatives of the Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

   ANSWER: No.

5. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal Government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

   Some of the characteristics of this "judicial activism" have been said to include

   a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: The broad range of this question and the identified criticisms of "judicial activism" perhaps could consume volumns (which they have) and are not necessarily suitable to a response within the context of this "Questionnaire for Judicial Nominees." Bearing in mind the limitations of time and space, perhaps an appropriate response might be to generally recognize that the role of a federal (or any) court is one to adjudicate, within a legal forum, controversies brought before that court; the adjudication of such controversies should be confined to the issues raised by the parties, with an application of the law to the facts as brought forward in that limited case, and not as a platform to set forth wide-ranging social solutions or the espousing of any political, social, or economic philosophy. To that end, a court should focus with a rather narrow view upon the issues raised in the specific litigation and resolve the grievance that such litigation presents to the court..

Because of that same judicial philosophy, it would seem to follow that it is unwise to take an individual case and try to promote it, by order or opinion, to answer anticipated issues not before the court; again, the view of the court should be constrained to the case before it and not towards some perceived societal need. The court's decision should be applicable to the individual litigants and not to others who are not before the Court.

I believe there to be a trend among legislative bodies, and courts to perhaps seek solutions by imposing ever increasing and often impractical duties upon governments and society...it is the role of a court, in my view, to interpret legislation and apply a rather tight view of the language of the statute rather than interpreting that a "umbrella" has been raised by the legislature to cover any and all problems conceivably implied by the legislation. The intent of the legislation and/or regulation must be viewed, and unless another conclusion is clearly demanded, an interpretation should be placed which does not expand duties which the law might otherwise impose upon government or society. A tight and narrow interpretation, in my view, is far preferable to an ever-expanding reach of the arm of the court or the legislature via the courts.

Within the federal system, issues of "standing" and "ripeness" take on constitutional import. Unless the constitution, or statutory demands require it, the jurisdiction of the federal court should continue to be limited to those areas clearly expressed by appropriate law. Thus, where doubt is raised as to the "standing" of a party, or the "ripeness" of the controversy, a proper approach would opt against granting "standing" or imagining "ripeness".

Federal courts perhaps subject themselves to appropriate criticism when they become involved in the "running" of some institution which has been brought before the court and found deficient in meeting constitutional or statutory mandates. The role of the court, in my view, is to enforce its order through appropriate court sanctions, such as contempt proceedings, when those responsible for the institutions fail to carry out the court's legal orders. Often, in an effort to solve a problem, a court will find itself enmeshed in the actual administration of the duties a recalcitrant litigant. I do not believe this to be the proper responsibility of a Court, but rather the responsibility of those legally charged with administering the institution, who must be responsive to the order of the court. On occasion a court, perhaps in an abundance of judicial "concern", seeks to solve a problem rather than resolve the grievance brought before it.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 23, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: SHANNON T. MASON, JR.
United States District Court
for the Eastern District of Virginia

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Shannon T. Mason, Jr. for appointment as Judge of the United States District Court for the Eastern District of Virginia.

Our Committee is unanimously of the opinion that Mr. Mason is "Well Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 20, 1988

The Honorable Alan K. Simpson
United States Senate
Washington, D.C. 20510

Dear Senator Simpson:

Thank you for writing to Senator Biden regarding the nomination of Grace Hughes to be director of the Community Relations Service. In his absence, I wanted to confirm the agreement that has been reached on this nomination.

A hearing on Mrs. Hughes's nomination will be held on April 28. The nomination will then be ready to be placed on the committee's agenda for its May 12th business meeting.

I hope this information is helpful.

Sincerely,

Diana Huffman

Diana Huffman
Staff Director

GRACE FLORES-HUGHES

Birth:	June 11, 1946	Taft, Texas
Legal Residence:	Texas	
Marital Status:	Married	Harley Arnold Hughes
Education:	1973	American University
	1977	University of the District of Columbia BA degree
	1980	Harvard University MPA degree
Experience:	1972 - 1981	Department of Health, Education and Welfare Ofc, Asst. Secretary for Planning & Evaluation Program Specialist (1972-1977) Social Science Analyst (1977-1981)
	1982 - 1983	Wesleyan University Visiting Professor
	1984	University of Nebraska-Omaha Visiting Professor
	1984 - 1985	50th Presidential Inaugural Committee Special Assistant
	1985	The White House Office of Public Liaison Special Assistant
	1985 - present	Small Business Administration Ofc of Minority Small Business and Capital Ownership Development Special Assistant
Office:	1441 L Street, N.W. Washington, D.C. 20416 202 653-6407	

To be Director of the Community Relations Service

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. FULL NAME:

Graciela (Grace) San Miguel Flores Hughes

2. ADDRESS:

72 Westover Avenue
Bolling AFB, D.C. 20336

Small Business Administration
1441 L Street NW Room 602
Washington, D.C. 20416

3. DATE AND PLACE OF BIRTH:

June 11, 1946
Taft, Texas

4. MARITAL STATUS:

Married - Harley Arnold Hughes, Lieutenant General (USAF)
Deputy Chief of Staff, Plans & Operations
Pentagon, Room 4E1036
Washington, D.C.

5. EDUCATION:

Durham Business College	San Antonio, Tx 1965-67	Diploma 1967
University of D.C.	Washington, D.C. 1973-77	BA 1977
Harvard University	Cambridge, Mass. 1979-80	Masters, Public Administration 1980
George Washington University	Washington, D.C. 9-68/12-68	
American University	Washington, D.C. 9-73/12-73	

6. EMPLOYMENT RECORD:

1985-Present
Special Assistant, Small Business Administration
Washington, D.C. 20416

Serve as Special Assistant to the Associate Administrator for Minority Small Business & Capital Ownership Development. In this capacity I assist the Associate Administrator with the formulation of the policies and programs under Section 8(a) of the Small Business Act.

1984-1985
Served in various volunteer capacities during the 1984 Presidential Election and on the 50th Presidential Inaugural Committee; tasks ranged from the mundane; i.e., addressing envelopes to the significant; e.g., planning the Hispanic Inaugural Ball.

1983-1984
Visiting Professor
University of Nebraska
Omaha, Nebraska 68111

Taught political science course; American Government and Public Policy.

1982-1983
Visiting Professor
Nebraska Wesleyan University
Lincoln, Nebraska 68504

Taught American government.

1983-1983
Spanish Teacher Omaha Montessori School
Omaha, Nebraska

Taught Spanish to Montessor students ages 2-5.

1977-1981
Department of Health, Education and Welfare and Department of Health & Human
Washington, D.C. Services

Served in various capacities and GS grades during this time period. Among the key duties included: designing and managing research and evaluation studies; directing a departmental task force assigned to develop a comprehensive report on the Hispanic population. Represented the Department on the Select Committee on Refugee Policy. Participated in an inter agency task force. This task force was established to develop initiatives designed to improve HEW services to minority groups. Conducted a department wide survey of the department's data collection activities. This effort lead to the formulation of PL 94-311 which directs all federal agencies to collect data on Hispanic Americans.

1972-1977
Department of Health, Education & Welfare
Washington, D.C.

Served in various capacities and GS grades during this time period. The key duties included: serving as Acting Director, Office of Spanish Surnamed Americans - duties included advising the Secretary on policy issues affecting the illegal immigrant population of this country, representing the Secretary on the White House Domestic Council Committee on Illegal Aliens, and Chairing a White House Task Force on this population group, other duties included, preparing a comprehensive report to the President on HEW services provided to Hispanic Americans and served on a HEW task force established to develop racial/ethnic definitions for government wide use in collecting data on minority groups, the term "Hispanic" was derived from this effort.

7. MILITARY SERVICE:

No, I have not served in the military

8. HONORS AND AWARDS:

None

9. BAR ASSOCIATIONS:

None

10. OTHER MEMBERSHIPS:

American Society for Public Administrators (ASPA)
National Council of Hispanic Women
Republican National Hispanic Assembly

11. COURT ADMISSION:

None

12. PUBLISHED WRITINGS:

Co-authored an article for the New Book of Knowledge '80 Edition, entitled "Hispanic Americans," August, 1979

Authored an article for the Carswell AFB Officers Wives' Magazine entitled, "Thoughts about the Future Air Force Wife," June 1982

(See copies attached)

13. HEALTH:

My health is excellent - report from my last physical examination of May 14, 1987

14. PUBLIC OFFICE:

None

15. BUSINESS OR OTHER OCCUPATIONS:

None

17. CAREER:

More than 15 years of experience in the federal government has provided me with an understanding of the daily workings of our federal system not generally found in Presidential appointees. This opportunity to participate in the beginnings of public policy formulation, the strategies and compromises that are part of such formulations, the actual writing and public articulation of the final development of public policy and the oversight of the implementation of such policies has been invaluable to my recent successes. For example, my current duties at the Small Business Administration require a deep understanding of the federal system and a high degree of diplomacy in order to facilitate the implementation of government decision making with regard to minority small business owners, agency procurement officers and our Congress. The ability to serve as a successful mediator in extremely stressful situations between minority small business owners and our decision makers has served us extremely well in solving problems between these groups. Lastly, my experience as leader of various federal government task forces , acting director of an office, professor in a college classroom and the graduate level training I have received on management and administration have prepared me extremely well for a management position.

Publication ______ Vol. ______ Folios ______ Typed by ______ Date July 1, 79 Mss. Pg 1

Article Hispanic Americans ______ Author Dr. Harry Pachon with Grace Flores. Author's O.K. ______

Editor ______ Checker ______ Copy Editor ______ Editorial O.K. ______

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

What group of people in the United States can trace some of their ancestors back to before the Pilgrims landed in 1619? Also which same group has the largest number of recently arrived people to the United States? If you answered Hispanic Americans, or simply Hispanics, then you are correct in describing one of the fastest growing and soon to be largest minority group in the United States.

Hispanics, or those individuals whose ancestry can be traced to Mexico, Puerto Rico, Cuba and other Spanish speaking countries, including most of South and Central America, are rapidly becoming the most visible of ethnic groups in the U.S. They now number somewhere between 12 to 15 million people in the continental United States and are expected to surpass this country's Black population in numbers by the turn of the century.

Contrary to what many people think, Hispanics are not just residents of the Southwest United States. Although over half of all Hispanics in the U.S. live the five Southwest states of California, Texas, Arizona, New Mexico and Colorado, large numbers of Hispanics are found in New York, Florida, and Illinois and New Jersey. Four out of five Hispanics live in metropolitan areas and only 20 percent live in rural areas. Hispanic "Barrios" or neighborhoods can be found in almost every large city in the United States.

Hispanics are perhaps the most historical and varied of all ethnic groups in America. In the Southwest and Florida, Hispanic influence goes back 400 years. The cities of San Francisco, San Antonio, Los Angeles, and St. Augustine were all founded by Spanish speaking peoples. Nearly a century before the establishment of Harvard University, a major university

Section________ Vol.____ Folios________ Typed by________ Date________ Mss. Pg. 2

Article Hispanic Americans Author________ Author's O.K.________

Title________ Checker________ Copy Editor________ Editorial O.K.________

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

flourished in New Mexico composed of Spanish speaking scholars. It is not surprising that many English words as rodeo, alfalfa, mesa, alligator, colorado, cork, mosquito, tobacco, tornado and vanilla all came from Spanish?

Interestingly, even though Hispanics have been present in the United States for four centuries, their numbers dramatically increased beginning with the 20th Century. There are several reasons for this. Like other immigrant groups to the U.S., such as the Irish or the Italians, Hispanics, especially those of Mexican descent, came to the U.S. at the turn of the century because of increased job opportunities. Beginning about 1900 more and more Mexican immigrants began coming to the U.S. for jobs present in industry, the railroads and agriculture. The immigration of Mexicans to the U.S. was further increased when the Mexican Revolution began and that country experienced turmoil and civil war for over 10 years (1910-1920). Other major immigrations from Spanish speaking territories and countries have been those from Puerto Rico, in the 1940's and Cuba in the 1960's. Every year nearly 140,000 people from South and Central America legally immigrate to the United States. Although much discussion has been made about illegal immigration from Spanish speaking countries, particularly Mexico, no exact figure is available on the number of illegal Hispanic immigrants who enter the U.S.

While some Hispanics in the United States can trace their ancestors to the original settlers of the land, and others are relatively recent immigrants, most Hispanics share certain things in common.

The first common thing all Hispanics share is the native language itself-Spanish. Surprisingly, the number of Hispanics who speak Spanish

Publication ________ Vol. ________ Folios ________ Typed by ________ Date ________ Ms. Pg. 3

Article Hispanic Americans Author ________ Author's O.K. ________

Editor ________ Checker ________ Copy Editor ________ Editorial O.K. ________

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

in the United States makes this country the fifth largest Spanish speaking country in the world. The sharing of a common border with Mexico, and the closeness of other Spanish speaking countries in the Western Hemisphere, have made Spanish unlike any other European language in the U.S. People who speak Spanish in the U.S. keep their language. In Florida, New York and California, Spanish radio and TV stations, as well as newspapers, helps maintain the vitality of Spanish.

Another common aspect shared by Hispanics is their Catholic religion. Historically, the exploration of the Southwest by Spain was aided by the establishment of a number of Catholic missions in such places as California. Father Junipero Serra founded "El Pueblo de Nuestra de Los Angeles de Porcincula," which today is modern Los Angeles. Currently, close to 90 percent of all Hispanics are Catholic and they have retained their Catholicism strongly.

Another common denominator among Hispanics is their shared heritage. October 14th, or Dia de la Raza, the day Columbus discovered America, is celebrated throughout Latin America. For many Hispanics this day marks the date when two races, the European and Indian of the Americas met and began a new race, the "Ladino."

Unlike Blacks, or Asian Americans, Hispanics do not have one common racial characteristic but instead a variety of skin colors, ranging from Black to Brown to White. Hispanics as a whole defy any single racially descriptive word.

Differences also exist among Hispanic groups such as Chicanos and Puerto Ricans who have distinctive holidays and language that adds to the

Publication ________ Vol. ________ Folios ________ Typed by ________ Date ________ Mss. Pg. 4

Title Hispanic Americans ________ Author ________ Author's O.K. ________

Site ________ Checker ________ Copy Editor ________ Editorial O.K. ________

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

mixture and color of Hispanics in the U.S. Hispanics of Mexican descent, for example, celebrate September 16th, and May 5th, or Cinco de Mayo, as major holidays. In many cities throughout the Southwest, September 16th is a day of parades, pageants and festivities, marking the common celebration of Mexican independence from Spain. Likewise in the Puerto Rican community, July 25th "Constitution Day" is a day celebrated by Puerto Ricans marking Puerto Rico's "Commonwealth" status.

Aside from holidays, language also varies among groups in the Hispanic community. "Chicano," for example is a word used to denote Hispanics of Mexican descent and is used extensively throughout the Southwest. This term would not be correct to describe Puerto Ricans where the corresponding term might be "Boricua." Other words are used distinctively by each group with corresponding regional accents.

Foods are also different among the different Hispanic groups. The "taco" and "burrito" of the Southwest are quite different from Puerto Rican "arroz con gandules" (rice and pigeon peas), "lechon asado" (roast prk) or "Cuban black beans." Perhaps the greatest distinction among Hispanics in foods is that Mexican food has corn as its primary starch while Puerto Ricans and Cubans and other Latin Americans have rice as their primary starch food. In contrast, most Americans have potatoes as their primary starchy food.

The greatest differences that have existed, however, are not among Hispanics, but between Hispanics and the majority American society. Although every ethnic group in the United States has encountered problems [illegible] arrival, Hispanics have encountered a greater set of problems

Publication________ Vol.________ Fonts________ Typed by________ Date________ Mss. Pg. 5

Title Hispanic Americans Author________ Author's O.K.________

Editor________ Checker________ Copy Editor________ Editorial O.K.________

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

them most. The first of these problems was the hostility that Americans had towards Mexico after the Mexican War ended in 1850. Even though some Hispanics fought on the American side during this war--just as they had during the Texas Revolution in the 1830's when Hispanics were present among the defenders of the Alamo--Mexicans and Hispanics were seen as the enemy after the war. The idea of viewing Americans of Mexican descent as the enemy--and a defeated enemy at that--contributed to the hostility that Hispanics faced in the Southwest over the years. Secondly, and as importantly, although Hispanics represent a rainbow of skin colors, the racial differences of Hispanics in many parts of the U.S. contributed to the prejudice and discrimination experienced by this group.

The current situation of the Hispanic community reflects both the group itself and American society at large. Because a large number of Hispanics have arrived in the United States during the past 70 years, Hispanics now face similar problems as those of other immigrant groups. Problems with English, lack of secondary education have all contributed to Hispanics having below average income and other social problems. (See Figure 1)

Facts on Hispanics in the United States

	Hispanics	Other Americans
Average Family Income	$13,293	$18,264
Percent of High School Graduates	10.4%	36%
Percent in Poverty	21.4%	9.3%
Family Size	3.3	3.9

However, past and current prejudice towards Hispanics in many parts of the U.S. [illegible] for the lack of opportunity that Hispanics have

Publication ____ Vol ____ Folios ____ Typed by ____ Date ____ Ms. Pg. ____
Title Hispanic Americans Author ____ Author's O.K. ____
Editor ____ Checker ____ Copy Editor ____ Editorial O.K. ____

There are 60 characters here - use the number for your book
123456789/123456789/123456789/123456789/123456789/123456789/

faced in employment and access to good housing.

Despite the obstacles that have faced the Hispanic community, great progess has been made by individuals and organizations concerned with improving the conditions of all Hispanics. Such individuals as Cesar Chavez have become national symbols of the dedication of individuals in bringing about change through non-violent means in their community.

Yet, as can be seen from Figure 1, Hispanics still fare poorly in education. To improve educational opportunity, bilingual education has been advocated by many Hispanics. Bilingual education is simply teaching children English by using the language of the home. With the passage of the Bilingual Education Act by Congress in 1968, bilingual education is now a reality in the U.S., and reaches over 500,000 children--68 percent of whom are Spanish speaking.

A host of other issues have traditionally concerned the Hispanic community in the United States. Such things as equal employment and educational opportunities, police brutality, and discrimination in all its forms, have been of concern to Hispanic organizations. Organizations that are active in the Hispanic community include the League of United Latin American Citizens (LULAC) founded in 1929, the G.I. Forum, an organization founded after World War II when a Texas cemetry refused to bury the body of an Hispanic World War II veteran. The Mexican American Legal and Educational Defense Fund (MALDEF) as well as the Puerto Rican Legal and Educational Defense Fund provide legal assistance to court cases involving Hispanics, ASPIRA which means to aspire, is a Puerto Rican organization concerned with educational opportunity and the

Thoughts About the Future Air Force Wife

By Grace Hughes

Military wives and volunteers are actually rather synonymous terms. In fact today, the armed services would be less effective without the help and support of volunteers. These military wife volunteers often perform the type of duties for which others receive income on a part-time or full-time basis. For example, managing the Thrift Shop, presiding over the Officers' Wives Club (OWC) and maintaining an account of the OWC's finances. Some might donate their time to the Red Cross and Family Services, while still others contribute their time calling to remind us of the various military functions/activities such as squadron or wing meetings.

This volunteer ethic dates back to the earliest days of our military when military wives not only nursed the wounded but also aided their husbands in combat. As the military of our country began to grow so did the wives' organizations. During World Wars I and II the wives' clubs flourished and enjoyed extremely high membership rolls.

During the past 20 years this country has undergone some major social revolutions that have affected both our military men and their wives. The 1960's saw many young Americans reject their country's involvement in the Southeast Asian conflict; i.e., many young people refused to serve and many who did serve chose to abandon their military obligations. As the U.S. became more deeply involved in this conflict, so did the voices of the American people grow against our involvement and against our military. Until the current Administration took office it was almost socially verboten to even join the military.

During this same period the women's movement began to take shape in our society. This movement gave impetus to the aggressive independence demonstrated by our youth during the early and mid 60's. Although the initial intent of the movement was to rectify the wrongs suffered by women in the working world, many of the women joined the movement to pursue their own personal crusades and thus the movement quickly evolved into one of a much broader focus. This major revolution led many women to "find themselves". The term "find themselves" describes a social phenomena ranging from leaving their husbands and children, returning to work on a full-time basis, or training for and entering careers that were traditionally male-dominated. To this end, many married women began to discover themselves as separate and distinct individuals no longer serving as mere appendages of their husbands. Because of either financial pressures or personal gratification, more wives began embracing the movement by: 1) entering the working world for the first time or 2) returning to it after years of staying home and taking care of their children and husbands.

While the movement can be credited with providing support to those women seeking educational alternatives or financial options, it was in fact a two-edged sword and created tensions for those loyal housewives who were not seeking other forms of alternatives to amend or supplement their status quo. In the meantime, this social phenomena was also reflected in our Air Force families. For example, the number of working wives, of both officers and enlisted men in the Air Force, has risen over the past 10 years. A statement made at the 1981 Air Force Conference on Families at Bolling Air Force Base revealed that approximately 44% of officers' wives and 65% of enlisted wives are employed. If this trend continues, the next generation of officers' wives will be a large part of both the military society and the civilian workforce. But as the question so often arises; can these wives afford to pursue their educational and employment goals, particularly those married to officers in command positions?

Volunteers are essential to the Air Force but can we lawfully or even ethically prevent military wives from seeking better financial gains for their families or setting higher educational goals for themselves? Arguments can be made for both sides and a solution satisfactory to everyone would likely not be reached. We should be aware that the ideals and goals of our entire country are changing. This change in turn affects our military families. We must prepare for the future and plan for its outcome in order to accommodate the military wife's activities. The Air Force recognizes that rapid social change coupled with high inflation has affected our Air Force families. As a result, our leadership is creating ways to assist the Air Force family in every way possible to encourage them to remain in the Air Force and at the same time enjoy a decent quality of life both socially and financially. One such approach to helping Air Force families are the new Family Support Centers (FACs). These Centers will provide a wide array of services never before available to Air Force families. Approval was given to establish five prototype FACs in FY 1981.

As today's Air Force is responding to societal changes, we must analyze how tomorrow's society will impact on the current mission of our Officers' Wives Clubs

I often hear that Officers' Wives Clubs are not what they used to be. There are not many things one can find today that are the same as they were 20 or 30 years ago. Although the memberships may not be soaring, the number of healthy clubs with active members demonstrate a continuing interest in club activities. It is these active members who can be counted on to hold office in the OWC and do an excellent job at the same time. On the other hand, those who choose to be employed are not, as some would have them believe, "going to ruin their husband's careers." These words are passe and no longer apply to today's situation. To place fear in this fashion on those who choose to work is a disservice to both our military wives and officers.

It is time to place our military lives in perspective. We must all admit that as wives of military officers, we face a social challenge unique from that of other American women. For one thing, many of us do not stay in one place long enough to establish career status, thus pursuing careers for military wives is extremely difficult. As implied earlier, in many, many cases, military wives work primarily to help place food on the table and achieve a better lifestyle. In the future, I believe we will have to accommodate both working and non-working military wives. Both of us have one thing in common, we are married to Air Force officers. We can support and assist each other in planning our Air Force lives. Non-working women are not necessarily more valuable to the Air Force than working women. Regardless, we collectively can continue to provide the Air Force its volunteers, but we cannot succed without the help and support of our husbands, and most importantly, our Commanders and their wives.

This article is dedicated to the women who served on the Executive Board of the Carswell Officers' Wives Club from June 1981 June 1982

About the Author:

Grace Hughes has written several articles on special population groups. Prior to her marriage to Brigadier General Harley Hughes and her entrance into the Air Force as a dependent wife, she served as policy advisor to the Secretary of H.E.W.

Mrs. Hughes holds a B.A. in psychology and a Master's degree in Public Administration from Harvard University.

Since her arrival at Carswell, Mrs. Hughes has served on the Carswell Officers' Wives Club Executive Board as Honorary President Ex-Officio. She has become actively involved in many facets of the Carswell community and is particularly committed to addressing the problems and challenges facing Air Force families.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

   None

2. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   None

3. I do not have any plans, commitments or agreements to pursue outside employment, with or without compensation, during my service with the position to which I have been nominated.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more.

   (See Financial Disclosure Report dated August 21, 1987- attached)

5. See Financial Disclosure Report dated Augusut 21, 1987 - attached.

6. Yes, I have served as a volunteer in political campaigns. See below.

   - U.S. Rep. Jim Collin's senatorial bid 1982 - volunteer
   - U.S. Rep. Hal Daub's congressional reelection campaign 1984 - volunteer
   - Reagan/Bush '84 Reelection Campaign/Victory Team 1984 - volunteer
     Omaha, Nebraska
   - Reagan/Bush '84 Reelection Campaign/National Headquarters
     Volunteer, 1984

SF 278 (Rev. 1/83)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0002

Page 1

Reporting Status (Check Appropriate Box)

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only

OGE Use Only

Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)

Termination Date (If Applicable) (Month, Day, Year)

Reporting Individual's Name

Last Name: HUGHES

First Name and Middle Initial: GRACE F.

Position for Which Filing

Title of Position: SPECIAL ASSISTANT

Department or Agency (If Applicable): SMALL BUSINESS ADMINISTRATION

Location of Present Office

Address (Number, Street, City, State and ZIP Code): 1441 L Street NW. Wash., D.C. 20416

Telephone No. (Include Area Code): 202-653-6407

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)

Title of Position(s) and Date(s) Held

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination

Do You Intend to Create a Qualified Diversified Trust?

☐ Yes ☒ No

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual

Date (Month, Day, Year): 8-21-87

Other Review
(If desired by agency)

Signature of Other Reviewer

Date (Month, Day, Year)

Agency Ethics Official's Opinion

The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature of Designated Agency Ethics Official/Reviewing Official

Date (Month, Day, Year)

Office of Government Ethics Use Only

Signature

Date (Month, Day, Year)

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I (Liabilities)**—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II (Agreements and Arrangements)**—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

278-100

NSN 7540-01-070-8444

SF 278 (Rev. [illegible])
FPM Chapter [illegible]
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
GRACE F. HUGHES	Assets and Income	2	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets							BLOCK C Income																	BLOCK D Transactions Test	
			Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)										If yes, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC		Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☒	None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only If "Other" Specified	Date (Mo., Day, Yr.) Only If Honoraria	YES	NO
	Examples.	X Y Z Common				X				X									X								X	
		Doe Jones & Smith, Hometown, USA			X											ptnrshp Income									$50,000			
1																												
2																												
3																												
4																												
5																												
6																												
7																												
8																												
9																												
10																												

PREVIOUS EDITION USABLE

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	GRACE F. HUGHES

Page Number	3	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (X): $1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example	X Y Z Common	X			3/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☒

S		Source (Name and Address)	Brief Description	Value
	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3				
4				
5				
6				

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name

GRACE P. HUGHES

Page Number	1	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE ☒

S or DC		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	

PREVIOUS EDITION USABLE

278-106

SF 278 (Rev. 1/84)
5 CFR Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name	GRACE P. HUGHES

Page Number	5	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☒

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/83	Present
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

PREVIOUS EDITION USABLE

WASHINGTON, D.C.:

AFFIDAVIT

I, Grace Flores Hughes, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Dec 22, 1987
(DATE)

Grace Flores Hughes
(NAME)

(NOTARY)

My Commission Expires November 14, 19[illegible]

CONFIRMATION HEARING ON VAUGHN R. WALKER

MONDAY, JUNE 13, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 2:07 p.m., in room SD-106, Dirksen Senate Office Building, Hon. Patrick J. Leahy (acting chairman) presiding.

Also present: Senators Heflin and Thurmond.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Melissa Balaban, nominations clerk; Robert J. Short, minority chief investigator.

Senator LEAHY. The Senate Judiciary Committee will come to order. I will put the opening statement in the record.

[Prepared statement follows:]

OPENING STATEMENT OF SENATOR PATRICK LEAHY

This afternoon the Judiciary Committee holds its 28th hearing in this Congress to consider nominations to the lower federal courts.

Today, we will take testimony on the nomination of Vaughn R. Walker to be United States District Judge for the Northern District of California. We will also hear the testimony of two witnesses supporting the nomination, and three witnesses opposing it.

As we customarily do, we will hear first from Senators who wish to introduce nominees to the Committee. Before we begin with Senator Wilson, let me note for the record that Mr. Walker, like all other nominees before the Committee, has completed an extensive questionnaire on his qualifications, experience, and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for follow-up questions to the nominee, and for additional questions that may be submitted by members of the Committee who are unable to be present this afternoon. We will also include in the record the complete introductory statement of Senator Wilson, and the written testimony submitted by the witnesses. Finally, we will include in the record numerous other submissions received from the nominee, from the witness Mary Dunlap, and from other interested parties.

Senator LEAHY. I have sent a letter to Senator Thurmond, the distinguished Senator from South Carolina. Senator Thurmond raised some questions recently about the processing of judicial and non-judicial nominees. In fact, this hearing was originally scheduled for an earlier date. I had plans to take time away from the hospital where my son was undergoing surgery, as Senator Thurmond knew, to be at this hearing; but I also explained to Senator Thurmond at the time that I would leave my son's hospital room to do one of two things: either have the hearing or respond to questions he was raising. But because he felt the questions were very necessary—and while I would not expect him to think he would want me to be away from my son's hospital room too long, I took the time to respond.

The response is as follows:

DEAR SENATOR THURMOND: At the most recent business meeting of the Judiciary Committee, you made a lengthy statement concerning the processing of judicial and non-judicial nominees. As I stated then, and as I had told you at a previous meeting of the committee I would do, I cleared my schedule in order to review the relevant files and respond to your questions as a matter of the highest priority. I have now completed that review, and am pleased to provide the following information in response to your request. This letter addresses first the nominations you mentioned in your written statement, followed by the nominations about which you asked orally.

1. *David Treen.* You began——

Senator THURMOND. Mr. Chairman, if you will excuse me just a minute?

Senator LEAHY. Of course.

Senator THURMOND. Senator Wilson is here, and as all Senators are busy, I wonder if you would mind having this hearing and then going into this so we will not tie him up here.

Senator LEAHY. We certainly will not tie up Senator Wilson any longer than absolutely necessary because I know of his time constraints. Senator Wilson had asked me to have this hearing and we are doing that at his request and as a courtesy to him. Certainly we will make sure we get through with it.

1. *David Treen.* You began your statement by referring at some length to the nomination of David Treen as a "recent example of what nominees are being subjected to during the nomination process." Mr. Treen asked last month that his nomination be withdrawn for the stated reason (among others) that he considered it more important to pursue partisan political activity than to pursue confirmation to the U.S. Court of Appeals for the Fifth Circuit. While I would think that you would be more concerned about nominations currently pending, as contrasted with those that have been withdrawn for political reasons, I have reviewed the files on this nomination and offer the following response to your concerns.

I agree with you that the Treen nomination exemplifies one disturbing aspect of "what nominees are being subjected to during the nomination process." For reasons that I cannot fathom, a number of nominees are "being subjected to" the utter refusal of the Department of Justice to respond promptly or meaningfully, and in some cases to respond at all, to legitimate requests by the committee for further investigative assistance with regard to matters that bear directly upon their fitness for the Federal bench. Perhaps this baffling reluctance to cooperate with this committee is caused by the current problems at the Department, but in any event it has severely retarded the processing of several judicial nominations, all of which originated in the same Justice Department which now drags its feet and evades responding to this committee's request in a troubling proportion of cases.

The Treen nomination exemplifies this. I am constrained from giving full details by the need to maintain the confidentiality of this committee's requests to the Justice Department. I think it would be totally unfair to Governor Treen to repeat the serious allegations of impropriety which the committee received. These allegations have been neither proved nor disproved; indeed, from all appearances the Department refused to investigate them, so they remain simply allegations. However, I can state that, contrary to your statement, these allegations were neither "vague" nor "questionable"; they were quite specific, and between February 17, when they were first transmitted to the Department, and the time the committee became aware of the nominee's request for withdrawal of the nomination, I advised the Department of the names of four individuals who should be interviewed with respect to the allegations. As far as I know, none of these individuals was ever interviewed; at least, the committee has never received any report of such interviews, although one letter from the Justice Department indicates that the FBI would be directed to conduct an interview of one of these individuals.

You indicate in your statement that these allegations "could have been investigated by the committee's own staff and resolved almost immediately," and that the decision to request an FBI investigation was "an inefficient use of the committee's resources." Many allegations received by the committee with respect to nominees are investigated by committee staff. However, when complex allegations, particularly those alleging criminal activity, are involved, it does not seem unreasonable to ask the FBI to investigate rather than trying to resolve the matter "in house." After all, the FBI has at its disposal several thousand Special Agents, some large number of whom are stationed in Louisiana. By comparison, there are, to my knowledge, six or seven individuals on the committee staff (majority and minority) who have any investigative responsibility with respect to nominations of all kinds. More importantly, persons interviewed by FBI Special Agents can be, and sometimes are, criminally prosecuted for giving false information; there are no similar inducements to veracity in the case of persons interviewed by committee staff.

Particularly in a matter such as this one, involving serious and sensitive allegations, I fail to see why it is "inefficient" to ask for an FBI investigation, and to direct the committee staff to focus its attention on other matters bearing on the qualifications of nominees. If the Justice Department had promptly and thoroughly responded to the committee's request for additional investigative assistance, I believe the committee would by now be voting on the Treen nomination rather than conducting a post-mortem on a nomination that was voluntarily aborted for clearly stated political reasons. As you know, I agreed to hold a hearing on the Treen nomination, at which I would have asked the Department why they had not made the investigation requested by the committee. Before such a hearing could be held, Mr. Treen withdrew in order to be involved in a political campaign.

I must make one additional comment about the discussion of this nomination at the May 24 business meeting. Frankly, I was surprised, and I remain surprised, that you chose to read into the record a letter from Acting Assistant Attorney General Boyd to Chairman Biden, which contained direct quotations from the allegations I transmitted to the Department in confidence. I assume you were misled about the confidentiality of this material by the failure of Mr. Boyd to mark his letter as confidential. (My letter to him, to which his letter responded, was so marked.)

2. *Bernard Siegan:* This nomination presents some complex issues pertaining to the nominee's judicial philosophy, and some less complex issues with regard to his experience and qualifications for the U.S. Court of Appeals for the Ninth Circuit. We have held two hearings on the nomination, and although we have received numerous requests from public witnesses who wish to testify, I believe the record is reasonably complete. As Senator Kennedy stated at the business meeting, the committee has received a blue slip from one of the nominee's home state Senators objecting to his nomination. The treatment of this blue slip presents an important institutional issue for the committee. As I am sure you appreciate, it is also an issue that is of particular importance to the Chairman's role in fashioning committee policy in this area. I will be discussing this matter with my colleagues in the majority, and would be glad to talk further with you about it. I anticipate that Senator Biden will soon resume his Senate duties, and of course I would particularly like to know his views.

3. *Susan Liebeler:* Your statement indicates that the report on this nomination has not been filed with the Senate. That is correct. As you know, the majority report is complete, and was given to your staff on May 12, more than a month ago, on the understanding that you wished to prepare a minority report. I take it from your statement that you have decided to forego a minority report, and therefore I will take steps to have the nomination reported to the floor as soon as possible, unless I hear otherwise from you.

4. *Stuart Summit:* a hearing was held on this nomination on April 21. At that time, the nominee was asked about letters which had been sent to debtors of a New York law firm by lawyers, represented by the nominee, who were seeking to renounce their law partnership agreement. The sending of these letters was enjoined by a New York State court. While the nominee testified that these tactics were employed by his clients against his advice, he subsequently acknowledged that he had signed at least one of the letters in question. After the hearing, the principal opposing party in this case, a New York attorney, asked to testify in order to contradict the nominee's testimony on this issue. I believe the committee should seek to resolve this issue on the record, and I have arranged for this testimony to be taken at the hearing on June 21. In addition, the committee staff has continued its investigation of the degree of Mr. Summit's involvement in questionable tax shelter activities undertaken by some of his clients, and he has responded to written questions on these and other matters.

5. *Paul Gadola:* This nomination is a classic case of the syndrome I described above: the Justice Department's continuing failure to provide the committee with information which bears directly on the nominee's fitness for the Federal bench.

Our latest request for further investigative assistance was sent April 21. Some of the information sought in that letter was covered by our original request to the Department, which I sent more than 1 year ago, on May 15, 1987. No response to the April 21 request was received until May 31, when a partial response was received, not including some of the information originally requested in May 1987.

An additional response, also incomplete, was received last Friday.

When I wrote to you on March 23 concerning the status of judicial nominations, in response to three letters you sent to the Chairman earlier that month, I noted that I was "at a loss to know why the Department has been so dilatory" in responding to the committee's requests on this nomination, and concluded that "if you could prevail upon the Department to respond, that would certainly expedite matters." Evidently, your efforts over the past two months, like those of more than one Democratic Senator, have been unavailing. The Department's unresponsiveness has prevented the scheduling of a hearing on this nomination until now. I am reluctant to see this nominee continue to be held hostage by the Justice Department, however, and I plan to schedule a hearing on the nomination in June if at all possible. A representative of the Justice Department may be asked to testify at this hearing.

6. *Richard Voorhees:* I stated at the May 24 Judiciary Committee business meeting that a hearing would be held on this nomination on June 29. Since then, I have learned that the Senate might recess for the Independence Day holiday earlier than scheduled. In order to prevent any possibility of interference with my commitment to hold this hearing, I have decided to reschedule it one week earlier, on the morning of June 22.

If that is okay with you, Senator Thurmond.

Senator **THURMOND**. I am glad to have you hold hearings any time you do so.

Senator **LEAHY**. Thank you.

7. *Robert Roberto*——

Senator **THURMOND**. You have delayed and delayed, and I will be delighted to see you hold hearings.

Senator **LEAHY** [continuing]:

7. *Robert Roberto:* A hearing was held on this nomination on April 21, at which I raised with the nominee several serious matters that had been the subject of investigation by the committee staff. Among these matters were the following: (1) Justice Roberto's ruling, made without investigation and without consultation with prosecution or probation officials, that enabled a man who had just been convicted of conspiracy with organized crime figures to retain four liquor licenses that he held; (2) the interrogation of the nominee by prosecutors about a large pay claim he submitted when he left his position as Assistant District Attorney, a fact that he neglected to mention in responding to the committee's questionnaire; (3) allegations that the nominee, while counsel to an attorney grievance committee, was made aware of serious charges of attorney misconduct by a close personal friend, and took no action either to investigate the charges or to disqualify himself from the matter for months after he received the information * * *

Since the date of the hearing, the committee staff has continued to investigate these matters, and has obtained statements from several individuals whose recollection of events differs significantly from the account of events provided by the nominee in his testimony. I asked Justice Roberto to respond to written questions in connection with the District Attorney pay claim matter (referred to above); his answers were received on May 25. I anticipate submitting further questions to him in connection with several of the matters discussed at the April 21 hearing as well as at least two additional allegations * * *

8. *Vaughn Walker:* I know you are familiar with the controversies surrounding this nomination, including the withholding of a blue slip by one of the nominee's home State Senators, and the formal opposition to the nomination from the governing body of the largest city in the district in which the nominee would sit if confirmed. The hearing on this nomination, including the testimony of witnesses pro and con, had been scheduled for May 26. Since proceeding with the hearing on that date would have prevented a timely response to the questions you raised at the business meeting * * *, the hearing has been rescheduled for today, which was the earliest available date upon which all the invited witnesses could arrange to appear.

9. *Non-judicial nominees:* I am not in a position to comment directly on the status of the four non-judicial nominees mentioned in your statement. However, I have been informed that the committee is awaiting responses from the Justice Department to long-standing requests with respect to all three of the nominations for U.S. Marshal * * * With respect to the U.S. Attorney nomination of Thomas Ashcraft, I am advised that the committee's investigation is continuing. I am also informed that Mr. Ashcraft received a court appointment as U.S. Attorney last December, under which he may serve in that capacity until a nominee is confirmed for this position.

10. *Howard Levitt:* A hearing was held on this nomination on April 21, at which I raised with the nominee questions about his prior association with Joseph Margiotta, the former Republican leader of Nassau County who went to prison for insurance fraud, and about several illegal schemes with which Mr. Margiotta was involved. In particular, I questioned Justice Levitt about his knowledge of the insurance scheme whereby Mr. Margiotta distributed commissions from public insurance contracts to party designees around the county and about a practice whereby Mr. Margiotta's political organization coerced political contributions from county and municipal employees. Justice Levitt acknowledged providing information to Mr. Margiotta to assist with the distribution of insurance commissions, but denied knowing of the extortion by which the commissions were obtained. Similarly, he acknowledged knowing that Mr. Margiotta maintained lists of the political contributions made by county and municipal employees, but denied knowing why these lists were maintained and denied ever soliciting contributions from county or municipal employees working under him.

Since the date of the hearing, the committee has received confidential information raising further questions about Justice Levitt's knowledge and involvement with the solicitation of political contributions from county and municipal employees. On behalf of the committee, I submitted further written questions to him about this, to which he responded on May 25. In addition, the committee staff has been conducting further investigation about this matter by contacting individuals personally familiar with contribution practices in issue. Finally, the committee staff has been investigating allegations that Justice Levitt was publicly listed as maintaining an office at the firm of Margiotta & Ricigliano 10 years after he left the firm to become a judge.

11. *William Erickson.* A hearing was held on this nomination on May 16, at which Senator Simon raised questions about the nominee's judicial temperament, his extensive involvement in extra-judicial activities, and his membership in a country club that has been alleged to be discriminatory. On May 24, Justice Erickson responded to written questions, submitted by Senator Simon on behalf of the committee, touching on several of the issues raised at the hearing as well as on the nominee's decision to rule on a case in which one of his former partners was involved and his participation in the termination of employment of the Colorado Public Defender. Justice Erickson has not yet responded to a separate letter from Senator Simon concerning his membership in the allegedly discriminatory club. The committee staff has reviewed the by-laws of the club in question, which contain provisions strictly limiting the number and the membership privileges of female members on terms different from those applicable to men. In addition, the committee staff has not yet concluded its investigation of allegations, as to which the committee received conflicting information after the hearing, that the nominee has himself engaged in discriminatory conduct.

12. *Simeon Lake:* A hearing was held on this nomination on May 16, at which Senator Simon questioned the nominee about his relative lack of pro bono work in 19 years as a lawyer, his membership in a country club that has no black members, and his consultation of a State senator, later indicted for corruption, in a hotly contested civil rights lawsuit. On May 20, Mr. Lake responded to written questions, submitted by Senator Simon on behalf of the committee, concerning the nominee's pro bono work and two issues raised about his work on the civil rights lawsuit—(a) allegations that his client in the suit paid two individuals to infiltrate the plaintiffs' group and dissuade them from proceeding with the lawsuit, and (b) allegations that Mr. Lake disclosed a confidential settlement proposal in the suit to a non-party public official, who then proceeded to disclose its contents on a radio program.

Based on the responses received from Mr. Lake to these questions, and additional information received by the committee, the committee staff is conducting additional investigation into the civil rights suit and into another suit in which Mr. Lake defended charges of hazardous waste pollution. On June 8, Senator Simon forwarded additional written questions to the nominee on behalf of the committee, raising the following issues: (a) what steps the nominee took to prevent his client from contacting plaintiffs in the civil rights suit to dissuade them from proceeding with the suit; (b) on what other occasions he has disclosed settlement proposals to nonparties; (c) whether he requested the destruction of scientific evidence compiled in a controversial hazardous waste pollution case; (d) whether he was aware of allegations of misconduct by the State senator whom he consulted at the time he consulted him; (e) the total amount of time he has spent on pro bono matters in the 19 years he has been a lawyer; and (f) his relative lack of experience in criminal matters.

The nominee responded on Friday to these questions, and we are reviewing his response.

13. *Shannon Mason:* At the hearing held on this nomination on April 28, Senator Metzenbaum questioned the nominee extensively about his membership, maintained until shortly before the hearing, in two all-white clubs that allegedly have discriminatory membership policies. The committee also took the testimony of Oscar Blayton, a black attorney from the nominee's community, who expressed the opposition of the local and State organizations of the NAACP to Mr. Mason's nomination, because of his long-standing membership in organizations widely perceived to practice racial and religious discrimination. On May 5, Senator Metzenbaum asked the statewide black bar association, the Old Dominion Bar Association, to evaluate Mr. Mason's candidacy. This organization interviewed Mr. Mason, convened a meeting of its executive board, and last week reported to the committee that it opposed Mr. Mason's nomination. The committee's further development of the record on this matter will include an opportunity for the nominee to respond to the views of the Old Dominion Bar Association.

The next-to-last paragraph of your statement "reiterate[s] Chairman Biden's commitment last December" concerning nominations processing. I assume you refer to the Chairman's statement at the December 3, 1987 business meeting, when he said "it is my intention to give everyone that has been brought before us an opportunity to be voted up or down."

The actions taken by the committee in the unavoidable absence of the chairman are fully consistent with his statement. Of the nominations the committee had received by December 3, 1987, the committee has reported 60 nominations. Three nominations were withdrawn before the Committee could act, and five nominations (about seven percent of the total) are pending.

Your statement concludes with the remarks that the pace of nominations processing "reflects poorly on the process" and "is unfair to the nominees." I disagree with both those statements.

What has reflected poorly on the process in the past has been the habit of this committee to report judicial nominations within a few days after their receipt, before the opportunity for anything but the most superficial examination of their qualifications and fitness for a lifetime appointment to the Federal bench. When problems have emerged after the irrevocable step of Senate confirmation of these nominees, this committee has been justifiably criticized for the abdication of its role in the advice and consent process.

I do not believe it is enough to look at the President's signature on a nomination and a minimum qualified rating from the American Bar Association and then conclude the nominee ought immediately to be confirmed. I do not believe that the committee can thoroughly investigate and pass on a nomination for a Federal judgeship in 9 days, as was done in the case of Judge Douglas Ginsburg in 1986 or in 6 days, as was done for two other nominees that year, or in 5 days as was done for three nominees the year before. By contrast, the nominations activity in this Congress aims to identify and resolve questions bearing on the fitness of the nominees before they are given a lifetime charter to sit in judgment on the rights and liberties of the American people, not afterwards.

I sympathize with the position of nominees who must wait longer than they might have expected for a confirmation hearing and a committee vote. They may have gained the impression from examining some of the past practices of this committee that once a President has decided to nominate, then the advice and consent process was a simple formality, in which the Senate rubber-stamped the President's choice. The expectations of these nominees may have been disappointed. It is not in any sense unfair to them that the committee now approaches its constitutional responsibility with greater seriousness and deliberation. It is certainly not unfair to the American people whose interest in the finest possible Federal judiciary must take precedence over the subjective expectations of judicial nominees.

I trust that the foregoing is responsive to the questions raised in your remarks in the most recent business meeting of the Judiciary Committee.

[The letter of Senator Leahy follows:]

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 13, 1988

Senator Strom Thurmond
Senate Judiciary Committee
Washington, D.C. 20510

Dear Senator Thurmond:

At the most recent business meeting of the Judiciary Committee, you made a lengthy statement concerning the processing of judicial and non-judicial nominees. As I stated then, and as I had told you at a previous meeting of the Committee I would do, I cleared my schedule in order to review the relevant files and respond to your questions as a matter of the highest priority. I have now completed that review, and am pleased to provide the following information in response to your request. This letter addresses first the nominations you mentioned in your written statement, followed by the nominations about which you asked orally.

1. David Treen. You began your statement by referring at some length to the nomination of David Treen as "a recent example of what nominees are being subjected to during the nomination process." Mr. Treen asked last month that his nomination be withdrawn for the stated reason (among others) that he considered it more important to pursue partisan political activity than to pursue confirmation to the United States Court of Appeals for the Fifth Circuit. While I would think that you would be more concerned about nominations currently pending, as contrasted with those that have been withdrawn for political reasons, I have reviewed the files on this nomination and offer the following response to your concerns.

I agree with you that the Treen nomination exemplifies one disturbing aspect of "what nominees are being subjected to during the nomination process." For reasons that I cannot fathom, a number of nominees are "being subjected to" the utter refusal of the Department of Justice to respond promptly or meaningfully, and in some cases to respond at all, to legitimate requests by the Committee for further investigative assistance with regard to matters that bear directly upon their fitness for the federal bench. Perhaps this baffling reluctance to cooperate with this Committee is caused by the current problems at the Department, but in any event it has severely retarded the processing of several judicial nominations, all of which originated in the same Justice Department which now drags its feet and evades responding to this Committee's requests in a troubling proportion of cases.

The Treen nomination exemplifies this. I am constrained from giving full details by the need to maintain the confidentiality of this Committee's requests to the Justice Department. I think it would be totally unfair to Governor Treen to repeat the serious allegations of impropriety which the Committee received. These allegations have been neither proved nor disproved; indeed, from all appearances the Department refused to investigate them, so they remain simply allegations. However, I can state that, contrary to your statement, these allegations were neither "vague" nor "questionable"; they were quite specific, and between February 17, when they were first transmitted to the Department, and the time the Committee became aware of the nominee's request for withdrawal of the nomination, I advised the Department of the names of four individuals who should be interviewed with respect to the allegations. As far as I know, none of these individuals was ever interviewed; at least, the Committee has never received any report of such interviews, although one letter from the Justice Department indicates that the FBI would be directed to conduct an interview of one of these individuals.

You indicate in your statement that these allegations "could have been investigated by the Committee's own staff and resolved almost immediately," and that the decision to request an FBI investigation was "an inefficient use of the Committee's resources." Many allegations received by the Committee with respect to nominees are investigated by Committee staff. However, when complex allegations, particularly those alleging criminal activity, are involved, it does not seem unreasonable to ask the FBI to investigate rather than trying to resolve the matter "in house." After all, the FBI has at its disposal several thousand Special Agents, some large number of whom are stationed in Louisiana. By comparison, there are, to my knowledge, six or seven individuals on the Committee staff (majority and minority) who have any investigative responsibility with respect to nominations of all kinds. More importantly, persons interviewed by FBI Special Agents can be, and sometimes are, criminally prosecuted for giving false information; there are no similar inducements to veracity in the case of persons interviewed by Committee staff.

Particularly in a matter such as this one, involving serious and sensitive allegations, I fail to see why it is "inefficient" to ask for an FBI investigation, and to direct the Committee staff to focus its attention on other matters bearing on the qualifications of nominees. If the Justice Department had promptly and thoroughly responded to the

Committee's request for additional investigative assistance, I believe the Committee would by now be voting on the Treen nomination, rather than conducting a post-mortem on a nomination that was voluntarily aborted for clearly stated political reasons. As you know, I agreed to hold a hearing on the Treen nomination, at which I would have asked the Department why they had not made the investigation requested by the Committee. Before such a hearing could be held, Mr. Treen withdrew in order to be involved in a political campaign.

I must make one additional comment about the discussion of this nomination at the May 24 business meeting. Frankly, I was surprised, and I remain surprised, that you chose to read into the record a letter from Acting Assistant Attorney General Boyd to Chairman Biden, which contained direct quotations from the allegations I transmitted to the Department in confidence. I assume you were misled about the confidentiality of this material by the failure of Mr. Boyd to mark his letter as confidential. (My letter to him, to which his letter responded, was so marked.)

2. Bernard Siegan: this nomination presents some complex issues pertaining to the nominee's judicial philosophy, and some less complex issues with regard to his experience and qualifications for the United States Court of Appeals for the Ninth Circuit. We have held two hearings on the nomination, and although we have received numerous requests from public witnesses who wish to testify, I believe the record is reasonably complete. As Senator Kennedy stated at the business meeting, the Committee has received a blue slip from one of the nominee's home state Senators objecting to his nomination. The treatment of this blue slip presents an important institutional issue for the Committee. As I am sure you appreciate, it is also an issue that is of particular importance to the Chairman's role in fashioning Committee policy in this area. I will be discussing this matter with my colleagues in the majority, and would be glad to talk further with you about it. I anticipate that Senator Biden will soon resume his Senate duties, and of course I would particularly like to know his views.

3. Susan Liebeler: your statement indicates that the report on this nomination has not been filed with the Senate. That is correct. As you know, the majority report is complete, and was given to your staff on May 12, more than a month ago, on the understanding that you wished to prepare a minority report. I take it from your statement that you have decided to forego a minority report, and therefore I will take steps to

have the nomination reported to the floor as soon as possible, unless I hear otherwise from you.

4. Stuart Summit: a hearing was held on this nomination on April 21. At that time, the nominee was asked about letters which had been sent to debtors of a New York law firm by lawyers, represented by the nominee, who were seeking to renounce their law partnership agreement. The sending of these letters was enjoined by a New York state court. While the nominee testified that these tactics were employed by his clients against his advice, he subsequently acknowledged that he had signed at least one of the letters in question. After the hearing, the principal opposing party in this case, a New York attorney, asked to testify in order to contradict the nominee's testimony on this issue. I believe the Committee should seek to resolve this issue on the record, and I have arranged for this testimony to be taken at the hearing on June 21. In addition, the Committee staff has continued its investigation of the degree of Mr. Summit's involvement in questionable tax shelter activities undertaken by some of his clients, and he has responded to written questions on these and other matters.

5. Paul Gadola: this nomination is a classic case of the syndrome I described above: the Justice Department's continuing failure to provide the Committee with information which bears directly on the nominee's fitness for the federal bench. Our latest request for further investigative assistance was sent April 21. Some of the information sought in that letter was covered by our original request to the Department, which I sent more than one year ago, on May 15, 1987. No response to the April 21 request was received until May 31, when a partial response was received, not including some of the information originally requested in May 1987.

When I wrote to you on March 23 concerning the status of judicial nominations, in response to three letters you sent to the Chairman earlier that month, I noted that I was "at a loss to know why the Department has been so dilatory" in responding to the Committee's requests on this nomination, and concluded that "if you could prevail upon the Department to respond, that would certainly expedite matters." Evidently, your efforts over the past two months, like those of more than one Democratic Senator, have been unavailing. The Department's unresponsiveness has prevented the scheduling of a hearing on this nomination until now. I am reluctant to see this nominee continue to be held hostage by the Justice Department, however, and I plan to schedule a hearing on the nomination in June if at all possible. A representative of the Justice Department may be asked to testify at this hearing.

6. Richard Voorhees: I stated at the May 24 Judiciary Committee business meeting that a hearing would be held on this nomination on June 29. Since then, I have learned that the Senate might recess for the Independence Day holiday earlier than scheduled. In order to prevent any possibility of interference with my commitment to hold this hearing, I have decided to reschedule it one week earlier, on the morning of June 22.

7. Robert Roberto: a hearing was held on this nomination on April 21, at which I raised with the nominee several serious matters that had been the subject of investigation by the Committee staff. Among these matters were the following: 1) Justice Roberto's ruling, made without investigation and without consultation with prosecution or probation officials, that enabled a man who had just been convicted of conspiracy with organized crime figures to retain four liquor licenses that he held; 2) the interrogation of the nominee by prosecutors about a large pay claim he submitted when he left his position as Assistant District Attorney, a fact that he neglected to mention in responding to the Committee's questionnaire; 3) allegations that the nominee, while counsel to an attorney grievance committee, was made aware of serious charges of attorney misconduct by a close personal friend, and took no action either to investigate the charges or to disqualify himself from the matter for months after he received the information; and 4) the fact that the nominee, while a full-time judicial law clerk and assistant attorney general, conducted an outside practice of law.

Since the date of the hearing, the Committee staff has continued to investigate these matters, and has obtained statements from several individuals whose recollection of events differs significantly from the account of events provided by the nominee in his testimony. I asked Justice Roberto to respond to written questions in connection with the District Attorney pay claim matter (referred to above); his answers were received on May 25. I anticipate submitting further questions to him in connection with several of the matters discussed at the April 21 hearing as well as at least two additional allegations that have been brought to the Committee's attention since the hearing: 1) allegations that the nominee engaged in highly unusual undercover activities when he served as head of the vice squad in the Nassau County District Attorney's office; and 2) allegations that the nominee accompanied former District Attorney William Cahn on numerous overseas trips for which Mr. Cahn double-billed both Nassau County and the National Association of District Attorneys.

8. Vaughn Walker: I know you are familiar with the controversies surrounding this nomination, including the withholding of a blue slip by one of the nominee's home state Senators, and the formal opposition to the nomination from the governing body of the largest city in the district in which the nominee would sit if confirmed. The hearing on this nomination, including the testimony of witnesses pro and con, had been scheduled for May 26. Since proceeding with the hearing on that date would have prevented a timely response to the questions you raised at the business meeting last week, the hearing has been rescheduled for today, which was the earliest available date upon which all the invited witnesses could arrange to appear.

9. Non-judicial nominees: I am not in a position to comment directly on the status of the four non-judicial nominees mentioned in your statement. However, I have been informed that the Committee is awaiting responses from the Justice Department to long-standing requests with respect to all three of the nominations for U.S. Marshal. With respect to Marshal Evans, the situation is unchanged from last March, when I noted in my March 23 letter to you that "the Committee asked the Justice Department several months ago for permission to interview a Department employee who has information relevant to the nomination. That request was refused." So far as I know, the Department persists in that refusal. With respect to Marshal Earnest, the Committee received a partial response on March 17, 1988, to a request it made to the Justice Department one year earlier. That response indicated that the FBI had been asked to conduct certain interviews requested by the Committee in March, 1987, and that a further response would be forthcoming once the Department had received the results of these interviews. My understanding is that no further response has been received since March. Finally, with respect to Marshal-designate Hair, I understand that a request to the Department for further investigative assistance has been pending for some months without a response. With respect to the U.S. Attorney nomination of Thomas Ashcraft, I am advised that the Committee's investigation is continuing. I am also informed that Mr. Ashcraft received a court appointment as United States Attorney last December, under which he may serve in that capacity until a nominee is confirmed for this position.

In your oral remarks at the May 24 business meeting, you asked about the status of the following four nominations:

10. Howard Levitt: a hearing was held on this nomination on April 21, at which I raised with the nominee questions about his prior association with Joseph Margiotta, the former Republican leader of Nassua County who went to prison for insurance fraud, and about several illegal schemes with which Mr. Margiotta was involved. In particular, I questioned Justice Levitt about his knowledge of the insurance scheme whereby Mr. Margiotta distributed commissions from public insurance contracts to party designees around the county and about a practice whereby Mr. Margiotta's political organization coerced political contributions from county and municipal employees. Justice Levitt acknowledged providing information to Mr. Margiotta to assist with the distribution of insurance commissions, but denied knowing of the extortion by which the commissions were obtained. Similarly, he acknowledged knowing that Mr. Margiotta maintained lists of the political contributions made by county and municipal employees, but denied knowing why those lists were maintained and denied ever soliciting contributions from county or municipal employees working under him.

Since the date of the hearing, the Committee has received confidential information raising further questions about Justice Levitt's knowledge and involvement with the solicitation of political contributions from county and municipal employees. On behalf of the Committee, I submitted further written questions to him about this, to which he responded on May 25. In addition, the Committee staff has been conducting further investigation about this matter by contacting individuals personally familiar with contribution practices in issue. Finally, the Committee staff has been investigating allegations that Justice Levitt was publicly listed as maintaining an office at the firm of Margiotta & Ricigliano ten years after he left the firm to become a judge.

11. William Erickson. A hearing was held on this nomination on May 16, at which Senator Simon raised questions about the nominee's judicial temperament, his extensive involvement in extra-judicial activities, and his membership in a country club that has been alleged to be discriminatory. On May 24, Justice Erickson responded to written questions, submitted by Senator Simon on behalf of the Committee, touching on several of the issues raised at the hearing as well as on the nominee's decision to rule on a case in which one of his former partners was involved and his participation in the

termination of employment of the Colorado Public Defender. Justice Erickson has not yet responded to a separate letter from Senator Simon concerning his membership in the allegedly discriminatory club. The Committee staff has reviewed the by-laws of the club in question, which contain provisions strictly limiting the number and the membership privileges of female members on terms different from those applicable to men. In addition, the Committee staff has not yet concluded its investigation of allegations, as to which the Committee received conflicting information after the hearing, that the nominee has himself engaged in discriminatory conduct.

12. Simeon Lake: a hearing was held on this nomination on May 16, at which Senator Simon questioned the nominee about his relative lack of pro bono work in 19 years as a lawyer, his membership in a country club that has no black members, and his consultation of a state senator, later indicted for corruption, in a hotly contested civil rights lawsuit. On May 20, Mr. Lake responded to written questions, submitted by Senator Simon on behalf of the Committee, concerning the nominee's pro bono work and two issues raised about his work on the civil rights lawsuit-- a) allegations that his client in the suit paid two individuals to infiltrate the plaintiffs' group and dissuade them from proceeding with the lawsuit, and b) allegations that Mr. Lake disclosed a confidential settlement proposal in the suit to a non-party public official, who then proceeded to disclose its contents on a radio program.

Based on the responses received from Mr. Lake to these questions, and additional information received by the Committee, the Committee staff is conducting additional investigation into the civil rights suit and into another suit in which Mr. Lake defended charges of hazardous waste pollution. On June 8, Senator Simon forwarded additional written questions to the nominee on behalf of the Committee, raising the following issues: a) what steps the nominee took to prevent his client from contacting plaintiffs in the civil rights suit to dissuade them from proceeding with the suit; b) on what other occasions he has disclosed settlement proposals to nonparties; c) whether he requested the destruction of scientific evidence compiled in a controversial hazardous waste pollution case; d) whether he was aware of allegations of misconduct by the state senator whom he consulted at the time he consulted him; e) the total amount of time he has spent on pro bono matters in the 19 years he has been a lawyer; and f) his relative lack of experience in criminal matters. The nominee has not yet responded to these questions.

13. Shannon Mason: at the hearing held on this nomination on April 28, Senator Metzenbaum questioned the nominee extensively about his membership, maintained until shortly before the hearing, in two all-white clubs that allegedly have discriminatory membership policies. The Committee also took the testimony of Oscar Blayton, a black attorney from the nominee's community, who expressed the opposition of the local and state organizations of the NAACP to Mr. Mason's nomination, because of his long-standing membership in organizations widely perceived to practice racial and religious discrimination. On May 5, Senator Metzenbaum asked the statewide black bar association, the Old Dominion Bar Association, to evaluate Mr. Mason's candidacy. This organization interviewed Mr. Mason, convened a meeting of its Executive Board, and last week reported to the Committee that it opposed Mr. Mason's nomination. The Committee's further development of the record on this matter will include an opportunity for the nominee to respond to the views of the Old Dominion Bar Association.

The next-to-last paragraph of your statement "reiterate[s] Chairman Biden's commitment last December" concerning nominations processing. I assume you refer to the Chairman's statement at the December 3, 1987 business meeting, when he said "it is my intention to give everyone that has been brought before us an opportunity to be voted up or down."

The actions taken by the Committee in the unavoidable absence of the chairman are fully consistent with his statement. Of the nominations the Committee had received by December 3, 1987, the Committee has reported 60 nominations. Three nominations were withdrawn before the Committee could act, and five nominations (about seven percent of the total) are pending.

Your statement concludes with the remarks that the pace of nominations processing "reflects poorly on the process" and "is unfair to the nominees." I disagree with both those statements.

What has reflected poorly on the process in the past has been the habit of this Committee to report judicial nominations within a few days after their receipt, before the opportunity for anything but the most superficial examination of their qualifications and fitness for a lifetime appointment to the federal bench. When problems have emerged after the irrevocable step of Senate confirmation of these nominees, this Committee has been justifiably criticized for the abdication of its role in the advice and consent process.

I do not believe that it is enough to look at the President's signature on a nomination and a minimum qualified rating from the American Bar Association and then conclude that a nominee ought immediately to be confirmed. I do not believe that the Committee can thoroughly investigate and pass on a nomination for a federal judgeship in 9 days, as was done in the case of Judge Douglas Ginsburg in 1986, or in 6 days, as was done for two other nominees that year, or in 5 days as was done for three nominees the year before. By contrast, our nominations activity in this Congress aims to identify and resolve questions bearing on the fitness of nominees before they are given a lifetime charter to sit in judgment on the rights and liberties of the American people, not afterwards.

I sympathize with the position of nominees who must wait longer than they might have expected for a confirmation hearing and a Committee vote. They may well have gained the impression, from examining some of the past practices of this Committee, that once the President has decided to nominate them, the advice and consent process was a simple formality in which the Senate rubber-stamped the President's choice. While the expectations of these nominees may have been disappointed, it is not in any sense "unfair" to them that the Committee now aproaches its constitutional responsibilities with greater seriousness and deliberation. And it is certainly not "unfair" to the American people, whose interest in the finest possible federal judiciary must take precedence over the subjective expectations of judicial nominees.

I trust that the foregoing is responsive to the questions raised in your remarks at the most recent business meeting of the Judiciary Committee.

Sincerely,

S/ Patrick Leahy

Patrick Leahy

cc: All members of the Senate Judiciary Committee

Senator **Thurmond**. Mr. Chairman, I could say first that Senator Wilson is here. I would suggest that we hold this hearing. Then I will be glad to respond to you either today or at the next meeting.

Senator **Leahy**. Senator Wilson, glad to have you here. As you know, as I have done with many other Republican Senators, I have brought this nomination up for a hearing at your request. I am delighted to see you here. Please feel free, sir, to say whatever you like.

TESTIMONY OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Wilson**. Thank you, Mr. Chairman, Senator Thurmond. I very much appreciate the opportunity to appear before you today to introduce Vaughn Walker, who has been nominated by the President to serve on the U.S. District Court for the northern district of California. Mr. Chairman, I particularly wish to thank you for your personal courtesy in securing this date for the hearing to allow the attendance of witnesses who otherwise might not have been able to do so, so that we can have all before us at a single hearing, and for your taking the time to chair it.

Might I ask the further courtesy, Mr. Chairman, in light of the controversy surrounding Mr. Walker's nomination, to ask that you permit me to make a statement a bit longer than is otherwise common at confirmation hearings.

Senator **Leahy**. Senator Wilson, you know that you are a respected member of this body, and you take as much time as you want.

Senator **Wilson**. Thank you, sir.

Mr. Chairman, I am particularly pleased that the President decided to nominate Mr. Walker, as I had earlier recommended him after reviewing the work of my merit screening committee in the northern district of California. This screening committee, along with others that operate in the eastern, central and southern districts of California, have helped me make recommendations of 18 individuals to serve on the Federal trial bench in my State. Fifteen have been confirmed; two are awaiting Senate action; and one will be nominated shortly.

I want to note with some pride that the results produced by my merit-based system have received very good reviews from the organized Bar. I was particularly pleased when I learned that at a hearing of the Judiciary Committee conducted earlier this year on the issue of diversity in the selection of Federal judges during this administration, California Superior Court Judge Judith Chirlin made a number of complimentary comments about the process that I employ. I know that is a matter of particular interest to you, Mr. Chairman.

After reviewing the credentials, experience, abilities and temperament of every lawyer who submitted his or her application for consideration, my northern district committee found Mr. Walker to be particularly well qualified to serve on the Federal bench. This screening committee has come to the same conclusion about California Superior Court Judge Fern Smith, whose nomination is also pending before the committee and for whom, I hope, a hearing may also be held this month.

A review of Vaughn Walker's résumé, as well as information provided by those who have a clear-eyed view of his work as a litigator, know that he has all the necessary legal experience and sense of humanity to serve as a distinguished Federal judge. The American Bar Association certainly confirms this view, having found him qualified with a minority finding him to be well qualified.

The Bar association of San Francisco has come to the same conclusion.

Incidentally, there has been some representation by the opposition that others who ventured no opinion must be counted as having voted against a classification of him as qualified. That is distinctly not the case, as a letter in the record indicates.

While Mr. Walker's résumé has been made available to the committee, permit me to go through it very briefly. Mr. Walker received his undergraduate degree from the University of Michigan and his law degree from Stanford University. He has clerked for both State and Federal trial court judges, and for the past 16 years has worked at the nationally recognized San Francisco law firm of Pillsbury, Madison & Sutro.

At Pillsbury, Madison, Mr. Walker has established an impressive record of achievement, handling complex litigation and, as you will doubtless hear today, at times controversial litigation. And to put it bluntly, he has achieved an enviable win-loss record. In fact, it may be the win-loss record that has prompted some of the groundless attacks that have been made against him.

One of the most impressive pieces of information in Mr. Walker's résumé is that he has held leadership positions in the legal community, including the position of President of the Lawyers' Club of San Francisco. Mr. Chairman, I mention that because this group, the Lawyers' Club of San Francisco, is considered the forum for solo practitioners and those from small law firms. Yet even though Mr. Walker is a member of one of the largest and oldest and most prestigious firms in San Francisco, he was elected to the presidency of the so-called alternative voluntary bar association. I ask the committee to bear this in mind when presented with accusations that Mr. Walker is as large firm partner who is out of touch with the community.

Clearly, the members of the legal community do not agree with this skewed point of view of Mr. Walker's detractors. In fact, in addition to the ABA and the Bar Association of San Francisco, his judicial candidacy is endorsed by the Lawyers' Club of San Francisco.

Indeed, in letters I have received, copies of which, I believe, have been provided to the committee, distinguished members of the Bar have indicated their strong endorsement of Vaughn Walker's nomination. In light of the controversy that some have tried to generate about the nomination, I wish to emphasize, as was made explicit in some of the letters, Mr. Walker's supporters include both Democrats and Republicans, both those who have worked with Mr. Walker and those who have worked against them, and both those who have agreed with the views and litigation strategies of his clients and those who have disagreed. You will hear today from distinguished opposing counsel on his behalf.

As an illustration of this point, I would like to read from a copy of a letter addressed to Senator Biden from Mr. Kurt Melchior, an attorney in San Francisco. Mr. Melchior indicates that he has known Vaughn Walker for a number of years and endorses his nomination. He then goes on to say, and I quote: "However, that alone would not be sufficient reason to write you. Rather, I write because it is burned into my heart and soul, after practicing law for 36 years, that a lawyer should not be confused with his or her clients, and that a lawyer's own character and values should not be measured by those of the clients he or she represents. Like many lawyers, I have represented people with whom I disagree, whose values I deplore, or whom I acutely dislike. That is my personal business. But I would not wish to be judged by the identities of my clients or by the values which they hold or may be thought to hold. You and your committee do not need reminding that if lawyers were evaluated by who their clients are or what their clients do or think, the friendless and unpopular would have even more difficulty in obtaining counsel than they do.

"I have not studied the record in the case which has produced the criticism of Mr. Walker." He has reference there to the so-called Gay Olympics case. "His client, of course, prevailed before the highest court in the land. As a matter of pure personal preference, I would have sided with the petitioner and would have hoped that the case had come out the other way. But that does not matter. My point in writing is that no value judgment should be made, and I trust that your committee will make none, because Mr. Walker has successfully represented a client whose politics are unpopular in some quarters."

I would like to comment on another issue likely to be brought up by Mr. Walker's opponents today. It was mentioned in a letter addressed to Senator Kennedy and made available to the committee, written by a former associate of Mr. Walker's law firm, John Hightower. This letter was recently favorably quoted in a newspaper opinion piece written by two of the witnesses who are appearing before the committee today against Mr. Walker's nomination, Ms. Ginzberg and Ms. Dunlap.

Mr. Hightower expresses concern that Mr. Walker is "an activist advocate of extreme positions rather than a moderate, impartial referee." Well, if in serving his clients Mr. Walker had acted as anything other than an activist advocate, he clearly would have violated his duty as a lawyer to his client.

This point was made clear in a copy of a letter that I have received, which was addressed to Senator Cranston, from an attorney in San Francisco, Mr. William F. Murphy, who writes, "Dear Senator Cranston, I am a Democrat. I supported you in your last campaign for the Senate. I write this letter to urge you to support the nomination of Vaughn Walker. As an attorney who practices regularly in the northern district of California, I believe Mr. Walker is uniquely qualified for the position of U.S. district judge. I do not believe the criticisms leveled at Mr. Walker by the gay community are fair or factual. Mr. Walker, as a lawyer, is obligated to represent the interest of his client so long as he does so within the bounds of the law. Although I personally would have decided to withdraw the lien on the Waddell property earlier than the

USOC"—meaning the U.S. Olympic Committee—"in fact did in the Gay Olympics case, the criticisms of Mr. Walker as I see them simply take him to task because of his client's decisions and not because of his own conduct."

I might add to that letter from Mr. Murphy, to only note that when he says that he does not believe criticisms leveled at Mr. Walker by the gay community are fair or factual, he would be more accurate if he said "by certain members of the gay community." Certainly by no means all, because it is not a unanimous condemnation. Very much to the contrary.

Mr. Chairman, you may be told today that the entire San Francisco community is outraged by Mr. Walker's nomination in light of his representation of the U.S. Olympic Committee. Even if that were true—which it is not—I doubt that the committee would feel that judicial qualification should be determined by the popularity or disapproval of a client, much as has been pointed out in the rather eloquent communications from Mr. Melchior and Mr. Murphy.

But, in fact, while many may have hoped that Dr. Waddell would win his case so that the gay games might still be called the "Gay Olympics," a vast majority wish to put the episode aside. Specifically after the San Francisco Board of Supervisors had asked the International Olympic Committee to hold the Olympics in San Francisco on the condition that the gay games be authorized to call itself the "Gay Olympics," the people, the voters of the city and county of San Francisco, responded by a vote of 61 to 39 percent rejecting that condition on a ballot initiative last week.

I believe that the Board of Supervisors was similarly out of step with the community when it went on record against Vaughn Walker. But, again, Mr. Chairman, confirmation hearings by the U.S. Senate Judiciary Committee, confirmation hearings upon judicial qualifications, do not take place in the coliseum. The committee does not await a roar of approval from the crowd to determine judicial fitness.

What principle of American jurisprudence is more fundamental than that due process of the law requires that, however unpopular a client, that client and that client's cause of action are entitled to be represented by competent counsel?

Mr. Chairman, I know that questions have been raised about Mr. Walker's conduct during the Gay Olympics case, specifically about the liens on Dr. Waddell's house. I know that the committee will give Mr. Walker an opportunity to respond and will weigh the evidence presented by Mr. Walker against that of his detractors. I urge you to focus on the documentary evidence. This evidence makes clear that no matter what the committee's view may be about the propriety of the lien, at all times Mr. Walker acted responsibly—and I want to emphasize this—on his client's instructions.

And, in fact, while Mr. Walker was lead counsel for the Olympic Committee in the district court and the ninth circuit, he did not lead or control the litigation thereafter. After the ninth circuit decision, the case was handled in the Supreme Court by a firm here in Washington. And because the issue of lien removal did not arise until after the ninth circuit decision, it is clear that the decision to remove the liens was not Mr. Walker's to make.

Mr. Chairman, rather than go on to further illustrate the point about Mr. Walker's conduct during the Gay Olympics case, I will leave it to Mr. Ephraim Margolin, who filed as an amicus in opposition to Mr. Walker's client to do so in a way which I think this committee will find compelling.

In short, Mr. Chairman, if the committee believes that the U.S. Olympic Committee's policy restricting the use of the word "olympic" by others is wrong, the committee must bear in mind that the Supreme Court of the United States decided the Gay Olympics case in reliance upon a congressionally given right to use and to restrict the use of the word.

Therefore, the proper response, were the committee to seek a different result than that arising from the statute upon which the Supreme Court based its decision, is to change the law. The proper response is not to oppose the nomination of the Olympic Committee's outside counsel.

Mr. Chairman, I am aware that there are other issues of interest to the committee, such as Mr. Walker's club membership. I do know that he is prepared to address these issues, and I will permit him to do so and take no time of the committee to do so myself.

Mr. Chairman, because of your own interest in the process of judicial selection, I want to emphasize that during the past 5 years 15 nominees for the Federal trial court bench in California have come before this committee. Each nomination was a product of my merit screening system, and each time this committee has indicated its agreement with me and my screening committee by acting favorably on each nomination—a record of which I am very proud.

Vaughn Walker went through that same merit system process, and that is why I am confident that he deserves to be confirmed and also because I think you will find that the charges and the evidence leveled against him, frankly, are groundless.

One point of personal privilege, if I may, Mr. Chairman. I note in reading the testimony of Mr. Anthony, a subsequent witness, that he has pointed out that he feels Mr. Walker failed to report an effort on my behalf as a fundraiser for my 1978 gubernatorial campaign.

Senator LEAHY. I did not even know you ran for Governor.

Senator WILSON. Well, Mr. Chairman, you make my point. Very few do. It is one of the better kept secrets of modern day California political history. And, in fact, I had almost forgotten that Mr. Walker was involved in that. I will only say that from largeness of spirit, I forgive him his performance because, clearly, it was inadequate. In fact, that campaign became a haven for those who hate crowds. [Laughter.]

I may well be addressing more people today than I did in the entirety of that campaign, but in any case, I thought that as a student of history, you were deserving of that explanation.

Mr. Chairman, I do appreciate your courtesy, not only in arranging for this hearing, but I also appreciate your courtesy in extending to me greater time than I would ordinarily take in introducing even so distinguished a nominee as Mr. Walker. The circumstances, I think, dictate a response even by someone who has the privilege of introducing him. Because as is clear from Mr. Anthony's testimony—and his is the only one that I have read—it would seem that the attack that is made upon this nominee is wider than the candidacy of the nominee himself. It seems to be an attack upon the nominator, not the President, but in this case the Senator recommending to the President that he make that nomination.

So I do thank you, sir. With that, I will illustrate my gratitude by subsiding.

Senator **Leahy**. Senator Wilson, I appreciate your being here. I apologize for any inconvenience that may have been caused to you by the change in the last hearing or any inconvenience either to Mr. Walker and the witnesses. It was an unavoidable change.

I do appreciate your kind remarks. As you made known your interest, you had asked me to schedule this and have a hearing on it, and also Senator Heflin made that request. And, of course, we scheduled the hearing. I just might note for the record that you talk about the enjoyment of running for Governor of California. I suspect that probably it was on a par with the enjoyment of getting the assignment to chair all judicial hearings for a couple of years.

I should note for the record that in all instances save one when a Senator has come to me and asked to have a hearing on a Federal judge, a district judge or otherwise, that hearing has been set up and a date has been put together that is agreeable to the Senator requesting it. I say "save one." Virtually all the Senators making those requests were Republicans. The one Senator we had to turn down and delay was a Democrat.

I note this because somehow that message seems not to come through from the Department of Justice and others. So I appreciate your comments here today. I also appreciate the fact that you, like everybody else, have five other hearings going on. And I realize you may well not be able to stay.

Senator **Wilson**. Mr. Chairman, I appreciate your solicitude. I do have other things to do. However, for time being, I would be pleased to maintain station here. I may have to leave. I appreciate your understanding.

Senator **Leahy**. We would be pleased to have you here; we will understand if you do have to leave.

Mr. Walker, would you please stand and raise your right hand? Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. **Walker**. Yes, I do, Mr. Chairman.

TESTIMONY OF VAUGHN R. WALKER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Senator **Leahy**. Do you have friends or family members here you would care to introduce? This is usually the time that we do that.

Mr. **Walker**. Yes, I would appreciate that opportunity, Mr. Chairman. You will hear from my friend, Ephraim Margolin, who will testify. I do not believe I need give him a lengthy introduction. He is a very, very well-known lawyer in northern California, and nationally as well. He is president-elect of the National Association of Criminal Defense Lawyers. You will hear more of his background when he testifies.

In addition, two of my law partners, happily, are in Washington. The first is Fred Lowell, who handles our political law work at my law firm. Second is Phyllis James who, like I, is a litigator in the firm, and we have struggled through various litigation matters over a number of years.

Then two people very close to me personally, Vince O'Brien, who is undoubtedly my oldest friend; we grew up in Watseka, Illinois, together and have known one another for about 40 years, from kindergarten on. Happily, he lives in the San Francisco Bay area with his family, and we are able to maintain our friendship.

Finally, Betsy Graves, who formerly was on the staff of Senator Hayakawa of California and who is now head of government relations for First Interstate Bank, and is a very important person to me personally.

I appreciate the opportunity to introduce them to you.

Senator **LEAHY**. We welcome all those people and note for the record that they are here. We are delighted to have them.

Mr. Walker, if you have any opening statement that you wish to make, please feel free. Then we will go into the questions.

Mr. **WALKER**. Well, I want to join with Senator Wilson, Mr. Chairman, and thank you and Senator Thurmond and Senator Heflin for the opportunity to be here and to have this hearing. I appreciate the difficulty with which it has been scheduled and appreciate the good work of the staff of the committee in bringing this to pass.

Apart from that note of thanks and appreciation, Mr. Chairman, I do not have any prepared statement. I am, however, very happy to entertain any questions which you and the other committee members have.

Senator **LEAHY**. Thank you very much, Mr. Walker. Senator Wilson has spoken to me on numerous occasions about you and on your behalf. Senator Heflin has urged us to work out the schedule to have you here.

I understand that you have been a member since the mid-1970's of the Olympic Club in San Francisco. You are still a member of that club although you said in your response to the committee's questionnaire, if I could quote, "* * * if the committee deems it appropriate, I am prepared in the event of confirmation or at an earlier time to give up membership in the club unless by that time the situation at the club has changed."

The committee is somewhat familiar with the club because it came up during the confirmation hearings of Justice Anthony Kennedy. He was a member of it until shortly before he was nominated to the Supreme Court. We might just go down through what some of your understandings are of the membership practices.

Now, as I understand it, the by-laws of the Olympic Club restrict membership to gentlemen, and under the present by-laws, there cannot be any female members. Is that your understanding?

Mr. **WALKER**. That is only partially correct, Mr. Chairman. There are a number of women members of the Olympic Club. My understanding is approximately 800. Voting membership, however, is limited to men and has been for some period of time by formal by-law of the club. The club has undergone a number of developments recently which I believe suggest that that situation is changing.

There was a referendum in September or October of last year on membership practices; and although the majority membership by a very close vote decided to retain holding voting membership exclusively in men, there have been subsequent negotiations with another athletic club, a women's athletic club, and much discussion in the club as to how to accommodate both men and women on a full, participating basis in the club.

Senator LEAHY. But as of now, there is no provision for women to be voting members of the club.

Mr. WALKER. That is correct; as of now.

Senator LEAHY. Are there any black members of the club?

Mr. WALKER. Yes.

Senator LEAHY. How many?

Mr. WALKER. I do not know the answer to that. There were at the time I submitted my responses to the committee questionnaire probably only two. Later I learned that my statement to my committee that there were no black members was probably incorrect.

The club determined last year to begin a program of accelerated membership for blacks in the Olympic Club. In the past, there had been no formal exclusion of blacks or, indeed, any other racial minorities in the club. But there had been, I think, a failure of the club to adequately bring into its numbers people representative of the community.

Senator LEAHY. How many members are there in the club, approximately?

Mr. WALKER. I believe 4,000, but I would not want to be held to that number, Senator. I am not sure. There are several thousand.

Senator LEAHY. Okay. And you think that now there are two black members?

Mr. WALKER. I think there are more than that now. My understanding is that there were two in December, and that a number have been recruited and are being brought into the club on an accelerated basis.

Senator LEAHY. The reason I ask is that the ABA Code of Judicial Conduct speaks of judges not belonging to organizations that practice invidious discrimination. They do not go on to define that, but certainly there is a significant enough black population in the San Francisco area or the area where much of the membership of the Olympic Club comes from that it raises questions.

Do you think the Olympic Club practices invidious discrimination?

Mr. WALKER. I do not think it does now, Senator.

Senator LEAHY. Do you think it did?

Mr. WALKER. I think that there were a number of serious questions that should have been raised and were raised by many of us in the club about its membership practices.

Senator LEAHY. Did you?

Mr. WALKER. Yes.

Senator LEAHY. When?

Mr. WALKER. For a number of years. This has been a matter which has concerned me over a period of years, and I have tried to act with other members in order to, first, change the attitude of those who were in governing positions in the club to bring about an atmosphere in which members of all racial minorities—not only blacks—would be brought into full membership in the club; and that has been a successful effort.

The committee has in its records a letter from a lawyer in San Francisco with whom I worked in this regard. We had at that time a specific candidate in mind. And although that candidate was unable to complete his membership, the effort nevertheless went on. And I was active in attempting to effect this change.

I cannot claim complete credit for it, but I was certainly one of many in the club who were concerned about the club not being adequately representative of the community.

Senator **Leahy**. Well, when Justice Kennedy was before us, he said, and let me just quote, "The law in tort, says that you can be charged with the natural consequences of your own acts. It is clear to me that if a discriminatory barrier exists for too long, if it is visible, if it is hurtful, and if it is condoned; that the person who condones it can be charged with invidious discrimination. I would concede that."

Do you agree with that, just as a general observation?

Mr. **Walker**. I believe that is a correct general observation, yes, sir.

Senator **Leahy**. Well, do you think it applies to the Olympic Club? Do you think that the club's discrimination is sufficiently long-standing and visible to be considered invidious even if it was not motivated by ill will?

Mr. **Walker**. Well, in that club, I think it is difficult to establish that it was motivated by ill will. The important thing is, in my view, that a very significant proportion of the membership perceived this as something that should be righted and moved to correct it and, in fact, were successful.

It seems to me that the way these clubs are going to bring themselves into compliance with the ethical canon that you quoted from and referred to, as well as what many of us think ought to be done, is through the efforts of members in those organizations working within those organizations trying to effect change. I believe the Olympic Club is a very good example of an organization that is in the process of change, has successfully completed substantial change, and has promise of future change.

It seems to me as long as that is the case, it is appropriate for people of good will who want to see these changes effected to stay and work towards them.

Senator **Leahy**. Let us follow it up a little bit. Justice Kennedy when he was here indicated that the Olympic Club's policies have ill effects even if they are not "invidious" within the meaning of the ABA rule. He said in his questionnaire, the public questionnaire, that, "Real harm can result from membership exclusion regardless of its purported justification." Then when he came before the committee on December 14, he expanded and he said that the exclusion of women was "stigmatizing and inappropriate," and then said, and I quote, "There is no question that the injury and the hurt and the personal hurt can be there regardless of the motive."

Do you agree with that?

Mr. **Walker**. Well, I agree that it is inappropriate in this day and age for clubs to exclude on the basis of sex in the same way that it is inappropriate to exclude on the basis of race. The two situations should be distinguished with respect to the Olympic Club, however, in that there has been in San Francisco a women's athletic club offering comparable athletic facilities within a block of the Olympic Club. And until very recently, there has not been any substantial effort on the part of anyone to include both men and women in both of those organizations.

Now, I think the situation was different with respect to minorities. I think the exclusion of minorities from the Olympic Club was stigmatizing and inappropriate and is a wrong that has been righted, or at least is an impropriety which has been corrected and is in the process of continuing correction.

Senator **Leahy**. Back in October 1987, there was a referendum in the club on the question of removing the ban on women members. When that referendum was defeated, before Judge Kennedy was nominated to the Supreme Court, he resigned. He concluded that his position had become—and I am trying to quote him now—"quite untenable."

Now, he resigned when the referendum was defeated. You remained in the club. You stayed in the club after you were nominated to the Federal court. You remain a member today. Justice Kennedy felt that his membership had become quite untenable. You obviously feel differently. Do you want to explain why the difference?

Mr. **Walker**. I think the situation has changed even in the 6 months since Justice Kennedy has been here, Senator Leahy. Six months ago, in December 1987, the club did not have a practice of accelerating racial minority membership applications, as it does today. The club had not, as of that time, entered into discussions with other clubs to effect possible change in the voting membership status for women.

The situation factually today is different from that when Justice Kennedy faced the situation. In addition, living in San Francisco, as I do, I think I have been somewhat closer to the situation and more informed of these changes as they are taking place than was Justice Kennedy, who resided primarily in Sacramento and used the club's facilities when he was in San Francisco. But I have been concerned about this issue for a long time and, as the record before the committee indicates, attempting to effect these changes.

Senator **Leahy**. Let me just make sure we understand that. He sent a letter, and I will put the letter in the record at this point. It was an August 7, 1987, letter to the legal counsel of the Olympic Club

[The letter of Justice Kennedy follows:]

UNITED STATES COURT OF APPEALS
FOR THE
NINTH CIRCUIT

CHAMBERS OF
NTHONY M. KENNEDY
NITED STATES CIRCUIT JUDGE

SUITE 1000
555 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

August 7, 1987

Anthony B. Diepenbrock, Esq.
Townsend & Townsend
One Market Plaza, 20th Floor
Steuart Street Tower
San Francisco, CA 94105

Dear Mr. Diepenbrock:

Thank you for talking with me last week about The Olympic Club's membership policies, and for advising me that you met with Mr. Loring about my concerns.

Your report on a wide consensus to eliminate any fact or appearance of racial distinction is promising. As to the elimination of barriers to women as members, if the downtown club were to be moved in the near term, the outlook might be good; but as matters stand, I submit the club should explore a solution for the immediate future that embraces the present downtown facility.

My sense is that the membership poll soon to be undertaken will show strong support for positive steps. I would appreciate being advised of the results as soon as they are received.

As we discussed, any arguments based on the club's legal position are really beside the point. The fact is that constitutional and public morality make race or sex distinctions unacceptable for membership in a club that occupies the position that The Olympic Club does.

As promised, I am enclosing a copy of the article from The New Yorker magazine of July 27. It speaks of the historic, egalitarian ideals of The Olympic Club. The 200th year of our Constitution is high time for the club to renew its commitment to those ideals and to take prompt action to make them a reality.

I would most appreciate your and Mr. Loring keeping me closely advised in this matter.

If you come to Sacramento, I would enjoy hearing from you.

Yours,

Anthony M. Kennedy

Enclosure

cc: Scott Loring

Senator **Leahy**. Did you send any such letters or make public statements?

Mr. **Walker**. I did not send a letter to the legal counsel or make a public statement. But about 8 years ago I did send a letter to the assistant manager of the club, with a copy to the club president, urging that action be taken against a white club employee who had acted in an abusive manner toward minority employees. I have also written to the editor of the club publication urging that club membership rules be changed to permit full membership privileges for women.

Senator **Leahy**. Did you make any statements at membership meetings?

Mr. **Walker**. Not at membership meetings, but to members. Indeed, oral statements to the legal counsel, the individual who is representing the club and to people who were on a legal committee of the club who were looking into these matters. I had a number of such statements, and those can all be verified.

Senator **Leahy**. You stated that you would resign if this committee deemed that appropriate, but that is really not up to us. Maybe some members of the committee think it is a great idea, and some members of the committee might think it is a terrible idea. I do not think it would be appropriate for us to try to tell you. But if we do not express any kind of opinion, what are you going to do then?

Mr. **Walker**. Well, it seems to me, Mr. Chairman, that the decision is very much of an individual decision, not only individual to the nominee or potential nominee, but also with respect to the particular facts of the situation.

As I have indicated to you, I favor very strongly the inclusion of women as voting members of this organization. I think it would improve the organization, and I think it is the fair thing to do in this period of time. And I believe the club is moving in that direction. I believe that movement is palpable.

If I conclude that I am wrong in my optimism and the club is not making progress of that kind and it is a hopeless situation—as apparently Justice Kennedy, I think incorrectly, assumed at the conclusion of the 1987 vote of the membership—then I would resign without regard to whether the committee suggests that I do so or not.

Senator **Leahy**. But as of now you see no need to?

Mr. **Walker**. I think the club is making substantial progress.

Senator **Leahy**. Let me just give you one line again from Justice Kennedy. And I do not mean to split hairs on this. I think you have answered the questions, and there are a lot of other things to go on to.

But he said in his confirmation hearings: "It is most unfortunate, and almost Dickensian, for a group of lawyers to meet at 11:30 and to settle a case and to celebrate and say, well, let us all go to the club. And suddenly there is a silence and they cannot go because there is a woman there. That is stigmatizing. That is inappropriate."

Any reaction to that?

Mr. **Walker**. I agree. And with other clubs, one faces that situation all the time.

With respect to the public facilities at the Olympic Club, women have been admitted to those on an equal basis with men for many years.

So the particular situation which you cited, Mr. Chairman, does not apply to this club. The issue applicable to the Olympic Club is with respect to, one, voting membership, and admission to the full range of athletic facilities in the downtown club. And that is the only place where it makes a difference.

Senator **Leahy**. The downtown club in the eating areas, the bar, can women go in there?

Mr. **Walker**. Oh, yes, absolutely, and have for a number of years.

Senator **Leahy**. Let me ask you a few questions about—and incidentally, if the Senators want to break in with questions on any of these points, just feel free. I thought for the sake of time, I would just go down through these.

But naturally, Senator Thurmond, if at any point, you wish to ask a question, just let me know and I will yield to you immediately.

Senator **Thurmond**. Thank you, I will.

Senator **Heflin**. On the referendum that was conducted, did you take an active part advocating that women's rights be recognized?

Mr. **Walker**. I did, Senator.

Senator **Heflin**. In the affirmative action program, with the accelerating activities, did you take an active role in the affirmative action program?

Mr. **Walker**. I have advocated that, Senator Heflin, and have urged those who are more active in the governing of the club than I that that should be done, and have for a number of years.

And as a matter of fact, as recently as last week, I was urging that position to the person who is in charge of that activity.

Senator **Leahy**. Thank you, Senator Heflin.

Let me go to a few questions about the case of *International Olympic Committee* v. *San Francisco Arts and Athletics*. And if there is anybody else left in this room who doesn't realize it, that is the so-called Gay Olympics case.

Let me emphasize a couple of points first and foremost. First, the merits of this case are not at issue in this proceeding. The district court, a majority of the court of appeals, a 5-4 majority of the Supreme Court, upheld your client's claim that the defendants in this case could not legally call their athletic competition the Gay Olympics.

Now, some people, members of this committee or anybody else, can and may differ about whether that decision was a correct application of the Amateur Sports Act of 1978, and if so, whether the Act should be changed. But as far as the courts have concluded, that was the decision. If there is to be a change in the law, then it has to be a legislative change, and that is another forum, another issue.

Now, also I should note, having been a practicing attorney, and having been both a prosecutor and a defense attorney, and before that, in private practice, where I might try cases either for the plaintiff or defendant, there is nothing improper as far as I am concerned in the fact that you represented the International Olympic Committee and the U.S. Olympic Committee in this case.

There is nothing improper for a lawyer for a client to zealously pursue the case, or that you took the strong position the defendant should be prevented from using the term, "Gay Olympics."

You had a legitimate client in the case. You had a legitimate, nonfrivolous claim. The courts have ultimately upheld that claim.

This goes back to Senator Wilson's earlier statement. We do not determine whether people get confirmed or not based on whether they had clients we liked or disliked, or take the side of a case that we would have preferred to be on or not preferred to be on.

There have been a couple of isolated lapses from that standard here in the committee, but I do not intend to be a party to those lapses. I have not been in the past; and am not going to now.

I think what is the issue, and this is a legitimate issue, in any judicial nomination proceeding, is how the nominee has conducted himself or herself in the course of litigation.

Because how you conduct yourself will give us some idea of how you would be as a judge. Senator Thurmond has stated this time and time again, in a statement to nominees, that they must show judicial temperament, that the power that a judge, especially one with a lifetime appointment, gets, requires us to ask what kind of temperament do they have. Usually, the only way we determine that is by examining what you have done in your private practice.

Have you exhibited the balanced and reasonable temperament that a potential judge should have? Has the nominee allowed zeal for the cause to overcome common sense or a sense of compassion?

So those are the issues that will come out on these questions, as I am sure you will expect; not whether you won or lost, or whether you had a right to represent the client you did.

Of course, you had a right to represent the client you did, just as those on the other side had an absolute right to represent their clients, and were perfectly proper to fight the position you took.

Mr. **Walker**. And as importantly, Mr. Chairman, as the clients had a right to expect to be represented.

Senator **Leahy**. Exactly. Now, on the conduct, though, one of the questions that has come out, and was referred to just very briefly earlier today, has to do with the lien that the Olympic Committee placed on the property of the principal organizer of the athletic competition in question in this case, a Dr. Thomas Waddell.

Now, you litigated the case against Dr. Waddell for 5 years. What can you tell me about him?

Mr. **Walker**. Dr. Waddell was a community activist. He was a physician by training and profession who had a position as director of medical matters for a very large corporation, and then turned most of his attention to community activities in support of and on behalf of the gay community in San Francisco.

He was an outstanding citizen, a fine man, whose interests in protecting the interests of gay people in San Francisco was substantial and very effective.

Senator **Leahy**. He was a physician, a former Olympian himself?

Mr. **Walker**. That is correct. He was a participant in the 1968 Olympic Games in Mexico City, representing the United States in the decathlon.

And it is undoubtedly as a result of that experience that he felt that it would serve the interests of the gay community to have a series of athletic events specifically identified with that community.

Senator **Leahy**. Now, you are quoted in a newspaper article as saying basically what you said here: "Dr. Waddell was a fine guy who was a significant contributor to the community. I never to my knowledge said anything expressing antipathy toward him."

Mr. **Walker**. That is correct.

Senator **Leahy**. Now, turning to the lawsuit, I understand in 1984 your clients placed a lien on Dr. Waddell's property to secure a judgment in the amount of $96,000.

To the extent that you can, can you tell me about that, what your role was in it? I realize your client has declined to waive the attorney-client privilege, so you may be restricted. But to the extent that you can properly, tell us about that.

Mr. **Walker**. I appreciate the opportunity.

The client made the decision, Mr. Chairman, that under the law it had an opportunity or a right to recover the costs of suit in this litigation.

And although I was not making that client-type decision, I believe I am familiar with the general rationale. The Amateur Sports Act, as adopted by Congress, provides for the remedies of the Lanham Act. And the Lanham Act, as you are undoubtedly familiar, provides for the award of attorneys' fees in exceptional cases.

And the decision was made that this case, because it upheld a statute for the first time, because of other circumstances with respect to the importance of the case, primarily the fact that it vindicated the primary source of fundraising for the U.S. Olympic Committee, this was an exceptional case, and the decision was made to seek an award of attorneys' fees.

There were two defendants in the case. One was the corporate sponsor of the gay games, an organization called San Francisco Arts and Athletics, and the second was Dr. Waddell, who was its chief executive officer, I believe.

The liens that you referred to were obtained after a judgment for the award of attorneys' fees was secured. The corporation had no identifiable assets, none that could be located. And as is typically the case in small corporations of that kind, it was decided to hold the participants in forming the corporations as responsible for those attorneys' fees as well as the corporation.

This is very similar to the situation where a bank requires a corporate president of a small corporation to cosign a note.

So these liens were obtained, and placed on various properties owned by Dr. Waddell.

Senator **Leahy**. Various properties? How did you determine what properties?

Mr. **Walker**. Dr. Waddell was, in accordance with the Federal rules, examined on the question of his assets. A similar examination was conducted with respect to the corporation.

Those assets were identified, and those as to which liens were appropriate under the law, liens were obtained.

Senator **Leahy**. And what did you find in the way of properties?

Mr. **Walker**. There were a number of real estate properties in the Bay area. There was a building in which he lived on Albion Street in San Francisco, and there were two or three other properties in the Bay area. All of them were identified.

I do not offhand remember the precise location of all of them. They were not all in San Francisco.

Senator **Leahy**. And was the lien placed on all of them?

Mr. **Walker**. Yes.

Senator **Leahy**. And the judgment was for how much?

Mr. **Walker**. $96,000.

Senator **Leahy**. Do you recall what the value of all the property was that the lien was placed on?

Mr. **Walker**. I don't, but it was substantially in excess of the amount of the judgment.

Senator **Leahy**. But while the lien was on all the property, all of it was encumbered, even if it went substantially beyond the value of $96,000; is that correct?

Mr. **Walker**. Well, certainly, a lien is a notice of a claim by a judgment holder or other creditor of an interest.

Senator **Leahy**. As a practical effect?

Mr. **Walker**. As a practical effect, it certainly has the same effect as any other judgment.

Senator **Leahy**. Nobody is going to buy the property knowing that. Because assuming you are successful, that judgment could be exercised against any piece of property the lien was on.

And if you had five pieces of property that each had a net worth of $96,000, somebody buys parcel number three, they have no way of knowing that that might not be the one you would exercise judgment on; is that correct?

Mr. **Walker**. There is no question that a person interested in purchasing the properties, or in loaning money on the properties, would want to see those liens cleared up. There is no question about that.

Senator **Leahy**. Now, the defendants appealed the $96,000 fee award. The ninth circuit vacated. They remanded it to the district court "for further proceedings to determine whether the defendant's conduct was sufficiently exceptional to make an award of attorneys' fees justifiable," and to require you and the other lawyers for the Olympic Committee to provide further details on your attorneys' fees claim. Is that correct?

Mr. **Walker**. The emphasis really is on the latter, Mr. Chairman. The decision of the ninth circuit was based primarily on what it seemed to feel was an inadequate factual showing in support of the amount of the award.

As both I and the other counsel for the U.S. Olympic Committee read the decision, the court of appeals did not disagree with the idea, the concept of an attorneys' fee award, in this situation.

Senator **Leahy**. Now, once that decision had been rendered on January 27, 1986, it had the effect of wiping out your $96,000 judgment, did it not?

Mr. **Walker**. That is correct. That is the law of California.

Senator **Leahy**. So there is nothing left for your lien to secure? Nothing left for your lien to secure; is that correct?

Mr. **Walker**. Well, the judgment which underlay the liens, having been extinguished, the liens became ineffective.

A lien, as you undoubtedly know, must be in an amount certain. And so even if the court were to suggest that a future award of fees was appropriate, the fact that an amount certain had not been determined as of the date of the court of appeals decision, the liens were ineffective; that is correct.

Senator **Leahy**. Well, did you take any steps to remove the lien at that time?

Mr. **Walker**. Did I undertake any steps?

Senator **Leahy**. Yes.

Mr. **Walker**. No, sir.

Senator **Leahy**. The day after the court of appeals decision, the defendant's lawyer, Mary Dunlap, sent you and your cocounsel a letter in which she offered to settle the case.

Now, as I understand her settlement offer, she proposed to close the case in exactly the status which then existed. Your clients would have won the case on the merits, as far as the term Gay Olympics, while you would forget about seeking attorneys' fees from Dr. Waddell or any other defendant; is that correct?

Mr. **Walker**. I do not recall the exact date of a settlement proposal of that kind. I do recall a settlement proposal was submitted sometime after the court of appeals decision.

Senator **Leahy**. Why do we not give you a copy of the letter.

Mr. **Walker**. I have it, Mr. Chairman. And yes, I do recall the letter of January 28 from Ms. Dunlap. And I have also been handed a copy of a reply to that letter.

[Letters follow:]

MARY C. DUNLAP, Attorney at Law
425 Staples Avenue
San Francisco, CA 94112
Phone: (415) 587-8320

January 28, 1986

TO: Vaughn R. Walker
PILLSBURY MADISON & SUTRO
225 Bush Street
P.O. Box 7880
San Francisco CA. 94120

Richard Kline
Edward Colbert
BEVERIDGE DeGRANDI & KLINE
1818 H Street N.W.
Washington D.C. 20006

John I. Huhs
PISAR & HUHS
575 Madison Avenue
New York N.Y. 10022

Re: IOC v. SFAA C-82-4183 JPV
and Apps. No.'s 84-1759 and
84-2528

Dear Gentlemen,

In light of the decision of the U.S. Court of Appeals for the Ninth Circuit which totally vindicates your claims as to the substantive rights of USOC as to the word "Olympic", and which reverses and remands the attorneys fees issue, my clients have authorized me to renew our settlement proposal made to you last year. Lest there be any question about the terms on which we propose to settle this action, they are as follows: USOC and IOC will agree to dismiss the pending actions with prejudice, leaving the precedental decision of the 9th Circuit intact and fully powerful as to all subsequent controversies with whoever about use of "Olympic". SFA&A and Dr. Waddell will agree to dismiss the pending counterclaims (granting that the counterclaims have been rejected in full by the 9th Circuit, in its decision of 1/27/86). **SFA&A and Dr. Waddell** and their agents, successors, assigns, employees and each of them **will agree** not **to use "Olympic" in** any commercial way (to wit., to remain bound by the permanent injunction forever) USOC will forego any further proceedings on its claim for attorneys fees against SFA&A, Dr. Waddell, their agents, or any of them.

If you agree to the terms of settlement proposed, please apprise me in writing of that agreement not later than Monday, February 3, 1986. I regret the brevity of the deadline time period. It is necessitated by the reality that if you reject

EXHIBIT D p.1 ⑥

this settlement offer by my clients, I must have a petition for rehearing and suggestion for en banc rehearing on file and served by Monday, February 10, 1986.

My clients are not in a position to negotiate payment of any sum of money to your clients as and for attorneys fees, as I explained to Mr. Walker last year. However, my clients will agree to pay the sum of $2500. as and for all outstanding claims of plaintiffs for costs, and I am authorized to make that additional commitment as an incentive to your agreement to settle the action on the terms proposed by this letter.

Best regards,

Mary C. Dunlap
MARY C. DUNLAP

c. Thomas F. Waddell, Shawn Kelly, SFA&A

EXHIBIT D p. 2

(7)

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

LOS ANGELES
700 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90017
TELEPHONE (213) 629-9800

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER (415) 398-2096

WRITER'S DIRECT DIAL NUMBER
(415) 983-1500

WASHINGTON, D.C.
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 887-0300

SAN JOSE
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 947-4000

February 19, 1986

International Olympic Committee,
et al. v. San Francisco Arts &
Athletics, et al.

Ms. Mary C. Dunlap
Attorney at Law
425 Staples Avenue
San Francisco, CA 94112

Dear Mary:

I have had an opportunity to review with our clients the proposal set forth in your January 28 letter. It appears that your offer contains nothing to which our clients are not otherwise entitled.

If your clients are prepared to make payment of all or a substantial part of the attorneys' fees incurred by our clients, then consideration would be given to settlement. Otherwise, our clients feel that they have no reasonable alternative but to pursue attorneys' fees when and if the case is ultimately remanded to the District Court.

Very truly yours,

VRWalker

Vaughn R. Walker

⑨ EXHIBIT D p.3

Senator **Leahy**. Basically she offered to settle it on, you won the case but you would forget about seeking attorneys' fees?

Mr. **Walker**. That is correct. And as my reply indicates, that matter was reviewed with our clients, as appropriate, and the offer was rejected.

Senator **Leahy**. Had you accepted the offer, that would have wiped out the liens as well, would it not?

Mr. **Walker**. Well, the liens were wiped out as it were.

Senator **Leahy**. Also part of that settlement would have wiped them out, wouldn't it?

Mr. **Walker**. I'm sorry?

Senator **Leahy**. Also, had you settled it that way, that also would have wiped out the liens?

Mr. **Walker**. Well, yes. Although, as I noted, the liens were ineffective upon the rendition of the court of appeals' judgment.

Senator **Leahy**. You said in your response that you would consider settling only if the defendants would pay a substantial part of the vacated $96,000 fee award, as well as conceding defeat on the merits; is that correct?

Mr. **Walker**. Well, my reply to Ms. Dunlap was contained in the February 19 letter. It speaks for itself.

Senator **Leahy**. Let me just read it. "If your clients are prepared to make payment of all or a substantial part of the attorneys' fees incurred by our clients, then consideration would be given to settlement." Right?

Mr. **Walker**. That is correct. And I might say that with respect to that matter, the committee, the U.S. Olympic Committee, was prepared to accept substantially less than the full amount of the fees. But there was never any indication that the defendants were prepared to pay any part of the fees that had been awarded.

Senator **Leahy**. Now, had Ms. Dunlap made her settlement proposal prior to the court of appeals' decision? Your clients prevail on the merits while dropping the claim for attorneys' fees?

Mr. **Walker**. I believe that is correct. My recollection, Senator, is that I met with Ms. Dunlap and Dr. Waddell and others at Dr. Waddell's residence. I cannot at this time recall when that was, but it was almost certainly sometime before January 28, 1986.

Probably during the pendency of the ninth circuit appeal, but I cannot tie it down precisely.

Senator **Leahy**. Now, the Supreme Court ultimately upheld your position in a 5 to 4 decision. And just a month before you were nominated to the Federal court, the case was settled.

What were the terms of that settlement?

Mr. **Walker**. The terms of that settlement were essentially that the attorneys' fees matter would not be pursued by the committee; that both parties entered into a settlement agreement; agreed to issue a joint press release in which the defendants acknowledged the decision of the Supreme Court.

And that was at the time thought to be an amicable resolution of the litigation.

Senator **Leahy**. Which was basically the position that Ms. Dunlap had offered a couple of years before?

Mr. **Walker**. Well, I think it was somewhat different.

Senator **Leahy**. How was it different?

Mr. **Walker**. But in terms of the attorneys' fees award, that is correct.

Senator **Leahy**. Now, did you have any discussions with anyone representing Dr. Waddell about the liens or the attorneys fee issue between the time you rejected the proposed settlement in February, 1986, and January, 1987, when you received a letter from Ms. Dunlap on this topic?

Mr. **Walker**. I don't recall any such conversation, Mr. Chairman. I am aware that Ms. Dunlap has been reported as stating that the matter was discussed with me. I am not in a position to tell you that those discussions did not take place. I don't have a recollection of them.

I do know this, that when I received Ms. Dunlap's letter in January, 1987, in which she——

Senator **Leahy**. January 8?

Mr. **Walker**. I believe that is the date. In which she specifically and rather pointedly demanded action with respect to the liens, the very first thing that I did was to have an associate of my firm research the law with respect to the status of those liens in light of the court of appeals decision.

And he confirmed what my understanding of the law was. I feel certain that had Ms. Dunlap made an unequivocal demand of the kind contained in her January 8 letter, I would have done exactly the same thing.

So the fact that I did not do it before suggests to me that if the subject came up, it was not clearly stated.

Senator **Leahy**. Well, she wrote to ask you what, quote, "action you propose to take to remove these oppressive and unauthorized liens on Dr. Waddell's property."

[The letter referred to, and subsequent correspondence, follow:]

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-5555

January 8, 1987

TO: Vaughn Walker
PILLSBURY MADISON & SUTRO
P.O. Box 7880
225 Bush Street
San Francisco CA. 94120

Re: San Francisco Arts &
Athletics Inc. et al. v.
United States Olympic Committee et al.,
No. 86-270
(Civil No. C-82-4183 JPV)

Dear Mr. Walker,

It has come to my attention that your clients in the above-named case continue to have liens on the real property holdings, including the house and residence, of my client, Dr. Thomas F. Waddell of San Francisco.

I believe that these liens are unauthorized. There is no judgment pending to be enforced, in that the U.S. Court of Appeals for the Ninth Circuit vacated and remanded the award of attorneys' fees that was being secured by the liens on Dr. Waddell's property. Please notify me in writing as to the action you propose to take to remove these oppressive and unauthorized liens from Dr. Waddell's property. You must realize that these liens appear as clouds on Dr. Waddell's title to his property, precluding him not only from alienating that property but from borrowing upon and/or improving it. This is a serious business, and I intend to follow through as the law requires and permits to enable Dr. Waddell not to suffer continuous and differential hardships because of your client's notions of his liability for a non-existent attorneys' fees award. I note in this regard that your clients did not petition for certiorari as to the issues of attorneys' fees, as to which I believe the U.S. Court of Appeals for the Ninth Circuit's order vacating the award nullified the earlier judgment on this award, rendering your "security" devices of no legal force or effect. I would appreciate hearing from you as to what authority, if any, you have for your apparently contrary position.

I look forward to your responsive communication about this serious matter in the near future.

Best regards,

Mary C. Dunlap
MARY C. DUNLAP

c. Thomas F. Waddell, M.D.

Postscript: Having just received the brief for respondents in the Supreme Court, and noting that Pillsbury Madison & Sutro no longer appears as counsel of record thereon, I would appreciate being apprised of who is handling this case for USOC and IOC at the District Court level. Meanwhile, I am forwarding copies of this letter to the offices of those counsel listed on the brief for respondents, Messrs. Williams et al. and Kline et al.

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

SAN JOSE
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 947-4000

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER (415) 398-2096

WRITER'S DIRECT DIAL NUMBER

(415) 983-1500

WALNUT CREEK
1640 N. CALIFORNIA BLVD.
WALNUT CREEK, CALIFORNIA 94596
TELEPHONE (415) 946-8500

WASHINGTON, D.C.
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 887-0300

January 9, 1987

U. S. Olympic Committee -
Litigation - San Francisco
Arts & Athletics

Mary C. Dunlap, Esq.
1599 Dolores Street
San Francisco, CA 94110

Dear Mary:

This acknowledges your January 8, 1987 letter. I will consult with Mr. Kline and you will receive a response.

Very truly yours,

Vaughn R. Walker

cc: Richard G. Kline, Esq. - w/enc.
Ronald T. Rowan, Esq. - w/enc.

→ , JJ Hansen for LG

LAW OFFICES
WILLIAMS & CONNOLLY
HILL BUILDING
839 SEVENTEENTH STREET, N W
WASHINGTON, D C 20006

AREA CODE 202
331-5000

EDWARD BENNETT WILLIAMS
PAUL R CONNOLLY (1922-1978)
ROBERT A SCHULMAN
VINCENT J FULLER
RAYMOND W BERGAN
STUART E SEIGEL
JEREMIAH C COLLINS
ROBERT L WEINBERG
DAVID POVICH
STEVEN M UMIN
JOHN W VARDAMAN, JR
PAUL MARTIN WOLFF
J ALAN GALBRAITH
CHARLES H WILSON
JOHN G KESTER
WILLIAM E MCDANIELS
BRENDAN V SULLIVAN, JR
AUBREY M DANIEL III
RICHARD M COOPER
GERALD A FEFFER
ROBERT P WATKINS
JERRY L SHULMAN

LAWRENCE LUCCHINO
LEWIS H FERGUSON III
ROBERT B BARNETT
DAVID E KENDALL
JOHN J BUCKLEY, JR
TERRENCE O DONNELL
DOUGLAS R MARVIN
JOHN K VILLA
BARRY S SIMON
KEVIN T BAINE
STEPHEN L URBANCZYK
PHILIP J WARD
ELLEN SEGAL HUVELLE
FREDERICK WHITTEN PETERS
PETER J KAHN
JUDITH A MILLER
LON S BABBY
SCOTT BLAKE HARRIS
MICHAEL S SUNDERMEYER
JAMES T FULLER, III
DAVID D AUFHAUSER
BRUCE R GENDERSON

CAROLYN H WILLIAMS
F LANE HEARD III
STEVEN R KUNEY
GERSON A ZWEIFACH
SARAH H DUGGIN
ROBERT S LITT
PAUL MOGIN
DANIEL A WINKLER
JEFFREY B KINDLER
HOWARD W GUTMAN
NANCY F PREISS
STUART L GASNER
RICHARD S HOFFMAN
STEVEN A STEINBACH
P MICHELE ELLISON
JEFFERY R BERRY
STEPHEN I GLOVER
MARY G CLARK
MARK S LEVINSTEIN
JEFFERY D UBERSAX
DIANNE J SMITH
VICTORIA L RADD
CHERRY JOY BEYSSELANCE
GEORGE ELLARD
DANIEL F KATZ
JEFFERSON M GRAY

JEANNE M ROWSEE
MANLEY W ROBERTS
ELENI M CONSTANTINE
SVEN ERIK HOLMES
NICOLE K SELIGMAN
LAURA P MASUROVSKY
ROBERT M KRASNE
ROBERT W HAMILTON
WILLIAM R MURRAY, JR
EVA M PETKO
CYNTHIA C HOGAN*
KEITH D KRAKAUR
MARK J MULKOWER
KAREN ZACHARIA*
MATTHEW D LERNER*
STEPHEN D RABER
MARK R HASKELL
JOHN D CLINE
CHRISTOPHER B MEAD*
BRENT J GURNEY*
CHRISTOPHER C KEARNEY
JOHN P MONAHAN, III*
CHARNA E SHERMAN
HARRY J HICKS, III*
HEIDI K HUBBARD*

COUNSEL
LYMAN G FRIEDMAN
DONALD E SCHWARTZ
JAMES A BRUTON, III

* NOT ADMITTED IN DC

January 15, 1987

Mary C. Dunlap, Esquire
1599 Dolores Street
San Francisco, California 94110

Re: San Francisco Arts & Athletics, Inc., *et al.*,
v. United States Olympic Committee, *et al.*,
No. 86-270

Dear Ms. Dunlap:

In Dick Kline's absence, I am responding to your letter of January 8, 1987 to Mr. Walker.

You will recall from his letter to you of December 12, 1986, that our clients were obliged to incur printing costs to print substantial portions of the joint appendix which had been agreed upon by the parties but which were omitted from the version filed by petitioners. This resulted in a printing expense of $4,218.59. As you are aware, under the Supreme Court Rules this is a cost that is required to be paid in advance by petitioners, and therefore is past due.

We are certainly willing to consider the matters raised in your letter of January 8 and shall do so as soon as your clients provide a check in the amount of $4,218.59 made payable to "United States Olympic Committee."

Sincerely,

John G. Kester

cc: Ms. Sandra Nelson
Office of the Clerk
Supreme Court of the United States

Vaughn R. Walker, Esquire ✓
Richard G. Kline, Esquire

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

URGENT

January 28, 1987

TO: John G. Kester
WILLIAMS & CONNOLLY
Hill Building
839 - 17th Street N.W.
Washington D.C. 20006

Re: SFA&A et al. v. USOC
et al.
Civil No. C-82-4183 JPV
Sup. Ct. No. 86-270

Dear Mr. Kester,

This letter replies to yours of 1/15/87.

The $4,218.59 will be paid to your client as soon as possible.

However, that sum is absolutely unrelated to the liens that are upon Dr. Waddell's property because of actions of your clients in this litigation. I take the position as to those liens that they secure a non-existent judgment, which was vacated by the U.S. Court of Appeals for the Ninth Circuit last year. As your Respondents' Brief to the U.S. Supreme Court concedes, "[t]he Court of Appeals reversed the District Court's award of attorneys' fees to respondents, and remanded for further findings. Respondents did not cross-petition and have not sought review of that aspect of the case" (p.9 n.9) in the Supreme Court. I note that the footnote is in error, in that it indicates that the Court of Appeals reversed on this issue, when what it did in fact was to vacate the lower court's order as to attorneys' fees. Either way, your client is clouding titles to property on which it has no legal claim. If your client has not acted to remove the liens by February 15, 1987, I will advise my client Dr. Waddell to seek legal redress for that inaction immediately.

Best regards,

Mary C. Dunlap
MARY C. DUNLAP

cc. ACLU Foundation of Southern California
Thomas F. Waddell, M.D.

LAW OFFICES
WILLIAMS & CONNOLLY
HILL BUILDING
839 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20006
AREA CODE 202
331-5000

EDWARD BENNETT WILLIAMS
PAUL R. CONNOLLY (1922-1978)
ROBERT A. SCHULMAN
VINCENT J. FULLER
RAYMOND W. BERGAN
STUART E. SEIGEL
JEREMIAH C. COLLINS
ROBERT L. WEINBERG
DAVID POVICH
STEVEN M. UMIN
JOHN W. VARDAMAN, JR.
PAUL MARTIN WOLFF
J. ALAN GALBRAITH
CHARLES H. WILSON
JOHN G. KESTER
WILLIAM E. McDANIELS
BRENDAN V. SULLIVAN, JR.
AUBREY M. DANIEL III
RICHARD M. COOPER
GERALD A. FEFFER
ROBERT P. WATKINS
JERRY L. SHULMAN

LAWRENCE LUCCHINO
LEWIS H. FERGUSON III
ROBERT B. BARNETT
DAVID E. KENDALL
JOHN J. BUCKLEY, JR.
TERRENCE O'DONNELL
DOUGLAS R. MARVIN
JOHN K. VILLA
BARRY S. SIMON
KEVIN T. BAINE
STEPHEN L. URBANCZYK
PHILIP J. WARD
ELLEN SEGAL HUVELLE
FREDERICK WHITTEN PETERS
PETER J. KAHN
JUDITH A. MILLER
LON S. BABBY
SCOTT BLAKE HARRIS
MICHAEL S. SUNDERMEYER
JAMES T. FULLER III
DAVID D. AUFHAUSER
BRUCE R. GENDERSON

CAROLYN H. WILLIAMS
F. LANE HEARD III
STEVEN R. KUNEY
GERSON A. ZWEIFACH
SARAH H. DUGGIN
ROBERT S. LITT
PAUL MOGIN
DANIEL A. WINKLER
JEFFREY B. KINDLER
HOWARD W. GUTMAN
NANCY F. PREISS
STUART L. GASNER
RICHARD S. HOFFMAN
STEVEN A. STEINBACH
P. MICHELE ELLISON
JEFFERY R. BERRY
STEPHEN I. GLOVER
MARY G. CLARK
MARK S. LEVINSTEIN
JEFFERY D. UBERSAX
DIANNE J. SMITH
VICTORIA L. RADD
CHERRY JOY BEYSSELANCE
GEORGE ELLARD
DANIEL F. KATZ
JEFFERSON M. GRAY

JEANNE M. McWEE
MANLEY W. ROBERTS
ELENI M. CONSTANTINE
SVEN ERIK HOLMES
NICOLE K. SELIGMAN
LAURA P. KASUROVSKY
ROBERT M. KRASNE
ROBERT W. HAMILTON
WILLIAM R. MURRAY, JR.
EVA M. PETKO
CYNTHIA C. HOGAN*
KEITH D. KRAKAUR
MARK J. HULKOWER
KAREN ZACHARIA*
MATTHEW D. LERNER*
STEPHEN D. RABER
MARK R. HASKELL
JOHN D. CLINE
CHRISTOPHER B. MEAD*
BRENT J. GURNEY*
CHRISTOPHER C. KEARNEY
JOHN P. MONAHAN, III*
CHARNA E. SHERMAN
HARRY J. HICKS III*
HEIDI K. HUBBARD*

COUNSEL
LYMAN G. FRIEDMAN
DONALD E. SCHWARTZ
JAMES A. BRUTON, III

* NOT ADMITTED IN DC

February 6, 1987

Mary C. Dunlap, Esquire
1599 Dolores Street
San Francisco, California 94110

Re: San Francisco Arts & Athletics, Inc., *et al.*,
v. United States Olympic Committee, *et al.*,
No. 86-270

Dear Ms. Dunlap:

In accordance with your request, we have asked trial counsel in San Francisco to check the status of the liens to which you refer and to advise us. After they have done so, we shall be in a position to respond further.

Sincerely,

John G. Kester

John G. Kester

cc: Richard G. Kline, Esquire
Vaughn R. Walker, Esquire ✓

LAW OFFICES
WILLIAMS & CONNOLLY
HILL BUILDING
839 SEVENTEENTH STREET, N W
WASHINGTON, D C 20006
AREA CODE 202
331 5000

EDWARD BENNETT WILLIAMS
PAUL R CONNOLLY (1922-1978)
ROBERT A SCHULMAN
VINCENT J FULLER
RAYMOND W BERGAN
STUART E SEIGEL
JEREMIAH C COLLINS
ROBERT L WEINBERG
DAVID POVICH
STEVEN M UMIN
JOHN W VARDAMAN JR
PAUL MARTIN WOLFF
J ALAN GALBRAITH
JOHN G KESTER
WILLIAM E MCDANIELS
BRENDAN V SULLIVAN JR
AUBREY M DANIEL III
RICHARD M COOPER
GERALD A FEFFER
ROBERT P WATKINS
JERRY L SHULMAN
LAWRENCE LUCCHINO
LEWIS H FERGUSON III
ROBERT B BARNETT
DAVID E KENDALL
JOHN J BUCKLEY JR
TERRENCE O'DONNELL
DOUGLAS R MARVIN
JOHN K VILLA
BARRY S SIMON
KEVIN T BAINE
STEPHEN L URBANCZYK
PHILIP J WARD
ELLEN SEGAL HUVELLE
FREDERICK WHITTEN PETERS
PETER J KAHN
JUDITH A MILLER
LON S BABBY
SCOTT BLAKE HARRIS
MICHAEL S SUNDERMEYER
JAMES T FULLER III
DAVID D AUFHAUSER
BRUCE R GENDERSON
CAROLYN H WILLIAMS
F LANE HEARD III
STEVEN R KUNEY
GERSON A ZWEIFACH
SARAH M DUGGIN
ROBERT S LITT
PAUL MOGIN
DANIEL A WINKLER
JEFFREY B KINDLER
HOWARD W GUTMAN
NANCY F PREISS
STUART L GASNER
RICHARD S HOFFMAN
STEVEN A STEINBACH
P MICHELE ELLISON
JEFFREY P BERRY
STEPHEN I GLOVER
MARY G CLARK
MARK S LEVINSTEIN
JEFFREY D UBERSAX
DIANNE J SMITH
VICTORIA L RADD
CHERRY JOY BEYSSELANCE
GEORGE ELLARD
DANIEL F KATZ
JEFFERSON M GRAY
JEANNE M ROWZEE
MANLEY W ROBERTS
ELENI M CONSTANTINE
NICOLE K SELIGMAN
LAURA P MASUROVSKY
ROBERT M KRASNE
ROBERT W HAMILTON
WILLIAM R MURRAY, JR
EVA M PETKO
CYNTHIA C HOGAN*
KEITH D GRAHAUR
MARK J MULHOWER
KAREN ZACHARIA*
MATTHEW C LERNER
STEPHEN C RABER
MARK R HASKELL
JOHN D CLINE
CHRISTOPHER B MEAD*
BRENT J GURNEY*
CHRISTOPHER C KEARNEY
JOHN P MONAHAN III*
CHARNA E SHERMAN
HARRY J HICKS III*
HEIDI K HUBBARD*

COUNSEL
CHARLES H WILSON
LYMAN G FRIEDMAN
DONALD E SCHWARTZ
JAMES A BRUTON III

* NOT ADMITTED IN DC

March 13, 1987

Mary C. Dunlap, Esquire
1599 Dolores Street
San Francisco, California 94110

Re: San Francisco Arts & Athletics, Inc., *et al.*, v. United States Olympic Committee, *et al.*, No. 86-270

Dear Ms. Dunlap:

Following up our previous correspondence, it is my understanding, and you as a member of the California bar may correct me if I am in error, that vacating or removing a lien is initiated by your client's filing an appropriate motion in the court in California. I would not anticipate that the plaintiffs would oppose such action.

Sincerely,

John G. Kester

John G. Kester

JGK/lv

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

SAN JOSE
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 947-4000

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER (415) 398-2096

WRITER'S DIRECT DIAL NUMBER

(415) 983-1500

WALNUT CREEK
1646 N. CALIFORNIA BLVD.
WALNUT CREEK, CALIFORNIA 94596
TELEPHONE (415) 946-5500

WASHINGTON, D.C.
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 887-0300

May 28, 1987

United States Olympic Committee - Litigation - v. San Francisco Arts & Athletics

Judy Baer, Esq.
3929 24th Street
San Francisco, CA 94114

Dear Ms. Baer:

You recently advised me that you are performing estate planning work for Dr. Thomas Waddell. You expressed concern about what you described as "liens obtained by USOC" on Dr. Waddell's San Francisco property arising out of the attorneys' fees award in the above litigation.

You further advised that you had communicated with John Kester of Williams & Connolly about this situation but you did not feel that Mr. Kester's response adequately answered your concerns. You asked for further information from me.

It is our conclusion that the order of the United States Court of Appeals for the Ninth Circuit on January 27, 1986, which vacated and remanded the fee award, also extinguishes the United States Olympic Committee's liens on Dr. Waddell's property. This position has been communicated to Ms. Dunlap, litigation counsel for SFAA and Dr. Waddell in the above matter. We are aware of press reports in which Ms. Dunlap or Dr. Waddell have stated, even after the Ninth Circuit's decision, that the liens remained in effect. These statements are incorrect and we assume were made in an effort to engender sympathy for the position of SFAA and Dr. Waddell in the litigation.

To the extend Dr. Waddell is under a genuine misapprehension that the liens are still effective, you may advise him that this is not the case. Further, on his behalf, you may simply file a copy of the Ninth Circuit Court's opinion with any office where the liens are of record. That should record officially that the liens are no longer in effect.

My conclusion that filing a copy of the Ninth Circuit's decision is an effective means to clarify any genuine misapprehension is based on 18 U.S.C. § 1962 which makes applicable state law on the effect of federal judgments. In Bulmash v. Davis (1979) 24 Cal.3d 691, the California Supreme Court held that an order vacating a judgment automatically extinguishes a judgment lien based on that judgment:

> "Once vacated, the status of the parties that existed prior to the judgment is restored and the situation then prevailing is the same as though the order or judgment had never been made" (24 Cal.3d at 697).

Obviously, it is Dr. Waddell's responsibility to take whatever steps are necessary to clear up any misimpression among his actual or potential creditors that his properties are encumbered by liens arising out of the above litigation. You may use this letter for that purpose and I should be happy to communicate USOC's position on the matter to anyone with a genuine need to have it.

I trust the foregoing satisfactorily answers the question which you raised in our conversation.

Very truly yours,

VRWalker

Vaughn R. Walker

bc: Mr. George D. Miller
Ronald T. Rowan, Esq.
Richard G. Kline, Esq.
John G. Kester, Esq.

LAW OFFICES
JUDITH LAUTER BAER

3929 TWENTY-FOURTH STREET
SAN FRANCISCO, CALIFORNIA 94114

(415) 821-6700

July 9, 1987

Mr. Vaughn R. Walker
Law Offices of Pillsbury, Madison & Sutro
225 Bush Street
P.O. Box 7880
San Francisco, CA 94120 **HAND DELIVERED**

RE: United States Olympic Committee-Litigation v. San Francisco Arts & Athletics

Dear Mr. Walker:

I am in receipt of your letter dated May 28, 1987.

I agree with you that the order of the United States Court of Appeals for the Ninth Circuit on January 27, 1986, which vacated and remanded the fee award, also extinguished the United States Olympic Committee's liens on Dr. Waddell's property. I do not agree with your stated opinion that the liens do not remain in effect.

Enclosed herewith are copies of two Abstracts of Judgment recorded in the City and County of San Francisco, each in the amount of $96,600.00, listing Dr. Waddell as the judgment debtor and the International Olympic Committee, U.S. Olympic Committee, c/o of Pillsbury, Madison & Sutro, as judgment creditor. These two recorded Abstracts of Judgment constitute a cloud on Dr. Waddell's title to his residence. These liens are effective until removed by the recording of a release of judgment lien, pursuant to California Code of Civil Procedure Section 697.370. While recently going through some documents at Dr. Waddell's residence, I located additional liens that were recorded in Alameda, Contra Costa, and Marin counties; copies of these additional liens are also enclosed herewith. There may be other liens of which I am unaware.

Your advice that, in order to record officially that the liens are no longer in effect, I may "simply file a copy of the Ninth Circuit Court's opinion with any office where the liens are of record," is incorrect. I have spoken with Bruce Jamison, Chief Deputy Recorder of the City and County of San Francisco, who has spoken with counsel, and has confirmed that the Ninth Circuit Court's opinion, by itself, is not a recordable document. Furthermore, assuming, arguendo, that the opinion is recordable, the recording of the opinion would not remove the cloud on Dr. Waddell's title. I have spoken with counsel at Chicago Title Company, who advised me that a title company would require the recording of a release of judgment lien, in order to clear title. To that end, I have enclosed Releases of Judgment Lien, regarding each lien of which I am aware, for the signature of the judgment creditor, your client. I do not have a copy of the lien recorded in Alameda County; rather I have only a Lien Notice from the Alameda County Recorder. Therefore, the date of recording is not filled in on the enclosed Release of Judgment Lien for that County. Please fill in the appropriate date on that document. Also, please advise me of the existence of any additional liens of which I am unaware.

As you are aware, Robert Helmick, President of the United States Olympic Committee, has stated verbally to the media, as well as in writing, that the USOC intends to take no action against Dr. Waddell or any of his property. Please see the enclosed copy of Mr. Helmick's letter to Peter Ueberroth, dated March 24, 1987.

Because your letter to me dated May 28, 1987 stated that you "should be happy to communicate USOC's position on the matter to anyone with a genuine need to have it", I assume that you will cooperate in obtaining the proper signature on the Releases, and returning them to me at your very earliest convenience.

I trust that I will be receiving the executed Releases from you soon.

Very truly yours,

JUDITH LAUTER BAER

enclosures
JLB/cs

bcc: Dick Schaap

ROBERT H HELMICK
PRESIDENT

RECEIVED BY
COMMISSIONER'S OFFICE
MAR 30 1987
By

ROBERT H HELL
PRESIDENT
DR EVIE G DEIP
VICE PRESIDENT
STEPHEN B SOB
VICE PRESIDENT
WILLIAM B TUTT
VICE PRESIDENT
ANDRAS TORO
SECRETARY
HOWARD C MIL
TREASURER
WILLIAM E SIM
IMMEDIATE
PAST PRESIDENT
GEORGE D MIL
SECRETARY GE

March 24, 1987

Peter Ueberroth
Commissioner
Major League Baseball
350 Park Avenue
New York, New York 10022

Dear Peter:

Thank you for your recent note concerning Tom Waddell. I'm glad you brought this to my attention. I agree with you.

We are taking no action against Dr. Waddell or any of his property. Originally a lien had been filed on his home; however, it was released, and I have directed our attorneys not to reinstitute action even if authorized by the Supreme Court decision.

As you may know, the case is being argued in the United States Supreme Court today. At issue is whether we have the right to use the word "Olympic" with respect to an athletic competition. My personal view is that although we may need that clarification, we do not need to harass Dr. Waddell.

I hope all is going well for you. One of my great pleasures as President of the United States Olympic Committee has been working with a number of your LAOOC alumni who are assisting me inside the USOC, including Chuck Cale, Jay Flood, and David Simon. They are terrific.

With best personal regards,

Bob Helmick
President

RHH:bs

UNITED STATES OLYMPIC COMMITTEE
2190 FINANCIAL CENTER
DES MOINES, IOWA 50309
(515) 244-1116

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

SAN JOSE
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 947-4000

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER (415) 398-2096

WRITER'S DIRECT DIAL NUMBER

(415) 983-1500

WALNUT CREEK
1340 N. CALIFORNIA BLVD.
WALNUT CREEK, CALIFORNIA 94596
TELEPHONE (415) 946-5500

WASHINGTON, D.C.
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 887-0300

July 17, 1987

U. S. Olympic Committee - Litigation - v. San Francisco Arts & Ahtletics

HAND DELIVERED

Judith L. Baer, Esq.
3929 Twenty-Fourth Street
San Francisco, CA 94114

Dear Ms. Baer:

Per your request, I have executed the releases from judgment lien which you prepared. As you know, these releases simply formalize the fact that there has been no lien on Dr. Waddell's property since January 27, 1986.

Very truly yours,

VRWalker

~~Vaughn~~ R. Walker

Enc.

cc: Ronald T. Rowan, Esq. - w/enc.

Senator **Leahy**. At that time did you know that Dr. Waddell was suffering from AIDS?

Mr. **Walker**. I do not know whether I knew that at that time or whether I learned it sometime thereafter.

I did become aware of Dr. Waddell's condition sometime during this period of time, either late 1986 or early 1987.

Senator **Leahy**. On May 19, 1987, you received a call from Judith Baer, who identified herself as Dr. Waddell's personal attorney performing estate planning work for Dr. Waddell.

And did you know, or did she tell you why, Dr. Waddell's estate planning needs were urgent?

Mr. **Walker**. By the time I received this telephone call from Ms. Baer, which was about the middle or late May, I am quite sure that I knew of Dr. Waddell's condition.

I noted when I reviewed this matter that there was an article dated March, 1987, from the Oakland Tribune, which referred to that condition, and I had obtained a copy of that article and sent it to my client.

My practice throughout this entire litigation was to clip and send to the client every piece of newspaper coverage about the case or anything relating to it that came to my attention, and that article obviously did.

Senator **Leahy**. Were you aware, then, that part of his concern about estate planning was what kind of estate he might leave to his daughter?

Mr. **Walker**. I believe Ms. Baer explained that to me and said that at the time.

Senator **Leahy**. And did she say that Dr. Waddell wanted to refinance his house to obtain cash, and he was unable to do so because the lien was a cloud on the title?

Mr. **Walker**. I do not believe that. I do not believe that she did say that precisely. But she did say that she was doing estate planning work for Dr. Waddell. And I was by that time familiar with the reasons why.

Senator **Leahy**. Well, did she tell you that he was terminally ill, and the fact that this was his principal asset, the inability to clear title on it was particularly distressing to him?

Mr. **Walker**. I don't believe it was quite in those terms. What she had told me, Mr. Chairman, was that she had communicated on this subject with John Kester of Williams & Connolly who was handling the case for the U.S. Olympic Committee in the Supreme Court.

And I was aware of the fact that Mr. Kester and USOC's regular Washington counsel had been made responsible for dealing with this matter.

When I received Ms. Dunlap's letter on January 8, I referred it immediately to the Washington lawyers, who had been taking over responsibility for handling the case. And they handled all communications on the subject of the liens themselves. I was not involved in those communications until Ms. Baer telephoned me in May.

And what she said at that time essentially was that she had talked to the Washington lawyers, or at least Mr. Kester, and was not satisfied with his response, and wondered if I could help.

I replied with a letter, which I believe is in the committee's files, dated I believe the 28th of May, in which I on my own explained what the law was with respect to these matters; volunteered to make that letter available or any other letter available to anyone who Ms. Baer thought it should be made available to to assist her in her work.

Senator **Leahy**. You mentioned the May 28 letter. You told Ms. Baer to "file a copy of the Ninth Circuit Court's opinion with any office where the liens are of record."

You also said it was, "Dr. Waddell's responsibility to take whatever steps are necessary to clear up any misimpression among his actual or potential creditors that his properties are encumbered by liens."

Why not just fill out a simple form, a release form or something like that? I am not an expert in California law. But I know in Vermont and the District, where I am admitted to the bar, that is a fairly easy thing to do. Why didn't you just do that instead of shooting letters back and forth?

Give it to Ms. Baer to record. Thereby clear Dr. Waddell's title. He is dying anyway. What difference does it make?

Mr. **Walker**. Well, the position of the client, Mr. Chairman, was that upon completion of the case in the Supreme Court, if it turned out favorable to the USOC, it was my understanding that they fully intended to go forward and to pursue an award of attorneys' fees.

That was the instruction under which I was operating. And I was not at liberty to do anything which might in any way jeopardize that position later, or suggest that was not what the Committee wished to do.

Senator **Leahy**. Let me ask you this. Did the U.S. Olympic Committee know that Dr. Waddell was dying; that he was trying to protect his asset for his daughter? And you are saying the U.S. Olympic Committee wanted to make darn sure they held on to that?

Mr. **Walker**. The Committee's position was that the infringement action here was one that ought to be paid for, if, by anybody, by those who infringed the USOC's trademarks, rather than by the USOC itself.

That was a perfectly legitimate business decision on their part.

Senator **Leahy**. Well, who made the idea to go ahead and just make darn sure that the daughter doesn't get this as soon as he dies; that the Olympic Committee does?

Was that your idea? Was that your recommendation?

Mr. **Walker**. No, that was not their idea either. The reason for the liens on Dr. Waddell's personal property in the first place were, as I explained it, that it was the effective way that the corporation, the corporate defendant, would raise the money to pay off the attorneys' fee award.

The corporation had no assets which could be levied upon. The corporation was in a position where it could essentially walk away from a judgment.

These steps are the usual way in which a party can secure compliance with an obligation to pay pursuant to a judgment.

Senator **Leahy**. But if what you had told Ms. Baer was correct, the lien was not enforceable anyway. And to let this—I do not mean to be melodramatic about it, but to let Dr. Waddell die in peace. If all you had to do was to sign off on the release, I am not sure I understand why you did not.

How is your client hurt? What do they lose?

Mr. **Walker**. As I indicated, they intended to proceed with the collection of the fees at a later time. Ms. Baer also had, Mr. Chairman, a letter from the president of the U.S. Olympic Committee to Peter Ueberroth, now the Commissioner of Baseball, in which the USOC president indicated that the USOC did not intend ultimately to collect out of the personal assets of Dr. Waddell.

Ms. Baer knew that before I did. I do not know how she got that letter, but she had it, and that was clearly the position of the USOC. It had not been a position communicated to me.

Bear in mind one other thing, Senator, in this context. From November, 1987—I am sorry, November, 1986 on, I was not litigation counsel for the USOC in this matter. And my response to Ms. Baer was in essence a voluntary one, in order to help her with what she said were her concerns and those of Dr. Waddell.

Senator **Leahy**. But while you were in the volunteering mood, why not just pick up the phone to the USOC and say, hey guys, do you have any objection if I fill out form whatever-it-is and give it to these people? You are not going to go after the property anyway. He is going to die. He wants to leave it to his daughter. Just leave him go?

Mr. **Walker**. Well, I cannot go into discussions of that kind that I had with the client, Mr. Chairman. But I can tell you that the substance of my response on the 28th of May was discussed with the client.

I can tell you further that it was my idea to send that letter and did so with the client's concurrence. And further, of course, one can ask the question, if preparing a release of that kind is such a simple and straightforward matter, why didn't Dr. Waddell's lawyers do that?

I volunteered, as you will note in that letter, to sign off on any kind of statement which his lawyers felt was necessary in order to clear up any confusion on the part of Dr. Waddell's creditors.

And subsequently, when I was asked for my signature on a release, I did exactly as you suggested, Mr. Chairman; telephoned the client and asked them if I could sign these releases, and was given permission, and did so.

Senator **Leahy**. Well, Ms. Baer told the committee that when she called you on July 17, 8 days after she had delivered the releases, and several days after Dr. Waddell had died, she got the impression you had done nothing with them.

Is she correct in that?

Mr. **Walker**. No, she is not correct. She called me I believe on the 7th of July, 7th or the 9th. But she called me before the 17th.

And I forwarded copies of the releases to the U.S. Olympic Committee, secured their permission to sign them on behalf of the Committee, and to do so, I might say, on an accelerated basis; and then signed off on those and sent those back to Ms. Baer, and I believe that was on the 17th of July.

So the course that you suggested I should take, Senator, was one that I did take.

Senator **Leahy**. Would you do it any differently if you had it to do over?

Mr. **Walker**. I would not do anything differently today. I might say that I, like many people in the community, felt very badly about Dr. Waddell's condition and his situation.

As I indicated at the outset, he was an outstanding citizen who had done a great deal for the gay community, and for San Francisco. His was a personal tragedy.

But as frequently happens in litigation, there are rights of parties which have to be protected and represented, and I was doing what I thought was my job for my client.

Dr. Waddell, of course, had his own counsel, and was very ably represented.

Senator **Leahy**. Almost all your experience as a litigator has been in civil cases, is that right?

Senator **Heflin**. Are you going on to another subject?

Senator **Leahy**. I was going to.

Senator **Heflin**. I wanted to ask one or two questions about this.

When you take an appeal and get a judgment, you've got a $96,000 judgment, and the other side took the appeal, is there a provision to prevent a lien as there is in my State you can file upon?

Mr. **Walker**. There is in California. And in fact, we had attempted to secure a bond from the defendants, and that was resisted, and no bond was required in this situation.

It was quite unusual, I think, Senator Heflin, that one was not required in this situation; and no stay therefore applied to the judgment; and there was therefore no legal impediment on the part of the Committee from going forward and executing upon the judgment.

And obviously, the decision was made by the client to do just that.

Senator **Heflin**. Well, you filed a lien. Is your lien similar to the way it is in my State and most States, a lien that attaches to all property? You do not designate property, you just attach—you file a lien saying that there is a judgment, $96,000, against Dr. Waddell that automatically attaches to all of his property?

Mr. **Walker**. The liens here in question, Senator Heflin, were directed to specific pieces of property.

Senator **Heflin**. You do it differently than my State.

It is a pretty good way to collect. Our collection lawyers like it. Collection lawyers are pretty tough.

I don't know whether we have ever had collection lawyers that ever came up for a judge or not, but if he does, he is in for a rough time.

Senator **Leahy**. We used to have body writs back in Vermont, Judge Heflin, and the bigger the claim, the bigger the sheriff you'd send out.

Senator **Heflin**. Well, we just file liens. Don't be nice to them. It just protects them.

Now, when the circuit court of appeals reversed, they vacated the order. Did they issue an order with that or any opinion or what?

Mr. **Walker**. It is in the opinion.

Senator Heflin. If I am representing the appellant, that is the one who took the appeal, that just won and had the right to vacate, I can get an order that says, it is vacated.

That vacation order, if that is filed, automatically eliminates the liens, just by filing it.

Mr. Walker. That is correct, Senator. And in that respect, the laws of California and Alabama are the same, and I believe Dr. Waddell's lawyers here could have obtained exactly that kind of an order, and it would have had exactly the same effect.

Senator Heflin. Even if they did not get the order, they could have filed a copy of the opinion?

Mr. Walker. That is correct; absolutely.

Senator Heflin. Then any suffering therefore due, might be due to their malpractice?

Mr. Walker. Well, any suffering as a result of Dr. Waddell being under a misimpression that these liens were effective was a misimpression that his lawyers were in a position to correct and evidently did not correct, even after they were advised by counsel for the U.S. Olympic Committee that the USOC would not oppose an entry of some kind of order designating that these liens were no longer effective.

Senator Heflin. Now, do I understand you that whenever they asked you to do something in this regard, you said you were willing to cooperate?

Mr. Walker. Yes. That is correct, and indeed, my response to Ms. Baer is, I believe, the best evidence of that.

I was under the impression, and correctly so, that the matter of the liens and everything else was at that time being handled by the Washington lawyers.

Ms. Baer said she had not been satisfied by her responses from them. And I undertook, on my own, to see if I could correct the misimpression that she was under.

Senator Heflin. Now we also, in my area of the State, where you do not have to file the opinion, you merely have to file a statement to the effect that makes a reference to the opinion. I do not know whether you have anything like that in your State or not?

Mr. Walker. That is correct, Senator. And in fact, I prepared and sent to the Washington counsel a memorandum of law, of California law, on this subject.

And the law is that an order or statement of that kind is sufficient under California law. And that position was explained in the May 28 letter to Ms. Baer.

Senator Leahy. Just so I fully understand, Mr. Walker, there is still a matter where, after calling to get the permission of your client, aside from all the other considerations, you could have just filed a release form on the lien and released that lien; is that correct?

Mr. Walker. Well, I do not believe that I could have done that without permission of my client.

Senator Leahy. No, I am saying with the permission of your client you could have released the lien?

Mr. Walker. Well, I believe the lien was released anyway. But certainly however it was done, whether by sending the May 28 letter to Ms. Baer, or signing a formal release, whatever the mechanism, the result was the same.

Senator **Leahy**. Now, Ms. Baer said that she had been informed that the opinion of the ninth circuit is not a recordable document by itself, had she not?

Mr. **Walker**. That is what she informed me, yes.

Senator **Leahy**. So again we come back to the basic thing, whether it was a good policy judgment. I just want to make sure I understand the law of California.

Under the law of California, if your client gave you the permission, you could just file a lien release on the lien that was on Dr. Waddell's property; is that correct?

Mr. **Walker**. Well, I believe that Ms. Baer was mistaken with respect to California law, and that the answer was, as Senator Heflin pointed out, to file either a copy of the order, certified copy of the order, or the opinion itself.

Now, as you recall in that May 28 letter, Mr. Chairman, I stated that I would take such other steps as she requested to clear up any concern that she might have.

And the next thing that I heard from her was not until she communicated with me in July, when she asked for signed releases; and of course I then obtained permission to get those releases signed and sent off to her.

Senator **Leahy**. Have you ever been involved in getting a title opinion or title certificate on a property?

Mr. **Walker**. No, no.

Senator **Leahy**. You have never bought property?

Mr. **Walker**. Well, I have been involved in it indirectly.

Senator **Leahy**. I mean, you have bought property, and you have gotten a title certificate on it.

Mr. **Walker**. Yes, and in addition, I have done some of that work as an incidental part of my practice. But no, I am not a conveyancing lawyer.

Senator **Leahy**. I understand. But as a partner in your law firm, you would not tell somebody to go forward and buy a piece of property if it had a lien on it, would you not?

Mr. **Walker**. Well, I would if the lien could be explained, or if it were found to be inoperative.

Senator **Leahy**. Would you not be far more apt to say, let us see if we can get the lien removed, rather than give them a legal opinion that in my opinion this lien may be inoperative?

Mr. **Walker**. I am sorry, I have not made myself adequately clear, Mr. Chairman. I am not suggesting that Dr. Waddell's lawyers were obligated to render an opinion that the lien was no longer effective.

I was perfectly prepared to state to anyone who asked that the lien was no longer effective on any of Dr. Waddell's properties, and however Ms. Baer wished that to be conveyed, I was willing at least to relate the request to my client, and see whether my client would agree with it.

Senator **Leahy**. And would not a release of that specific lien by your client take care of the whole problem?

Mr. **Walker**. Well, ultimately, that is what was done.

Senator **LEAHY**. Well, let us just say right from the beginning, would that not have done it? And did you ever recommend, prior to the last few days of Dr. Waddell's life, did you ever recommend to your client that they just simply release the lien?

Mr. **WALKER**. Mr. Chairman, you are asking me for a communication I had with a client.

Senator **LEAHY**. Do you feel that is a privileged communication?

Mr. **WALKER**. I do. You have Mr. Kline's letter.

Senator **LEAHY**. Then let me ask you this question just as a matter of law. In a case such as this, is there any question that the release of the lien, assuming it is properly authorized, properly executed, takes care of the whole matter?

Mr. **WALKER**. It certainly does.

Senator **LEAHY**. We will stand in recess for 10 minutes to give everybody a chance to stretch here.

[Recess.]

Senator **LEAHY**. Why do we not return? Now, before we go off this subject of the Gay Olympics—and certainly any Senator can go back to any subject they want—but maybe for Mr. Walker's sake and the sake of the other witnesses, if we could keep them in segments, did anybody want to ask any further questions on this particular area?

Senator **HEFLIN**. Well, I had only one question.

Senator **LEAHY**. Senator Heflin.

Senator **HEFLIN**. To my mind, this is it seems to me even if you have got how you release a lien, there is a difference of opinion on this. I don't really see that—well, maybe we will get to something later on.

Senator **LEAHY**. Well, I suspect we will.

Senator Thurmond?

Senator **THURMOND**. I have a few questions, but I can go through mine fast I think. When you yield to me.

Senator **LEAHY**. Well, I will yield to you right now if you would like.

Senator **THURMOND**. Thank you. Mr. Walker, there has been a great deal of discussion today regarding your representation of the U.S. Olympic Committee in the case of *International Olympic Committee* v. *the San Francisco Arts and Athletics*.

Would you please tell the committee, whose decision was it to initiate litigation in this matter? And why did you take the case?

Mr. **WALKER**. The decision, Senator Thurmond, to initiate litigation, was made by the Committee itself acting through its regular counsel here in Washington, a firm now known as Kline, Rommel and Colbert.

Richard G. Kline is the counsellor to the U.S. Olympic Committee, and he made the decision to pursue this matter.

The decision, or the way I became involved, is that the matter of course arising in San Francisco, San Francisco counsel was necessary. And Mr. Kline approached Charles Renfrew, who was a partner in my firm at the time. He was a Deputy Attorney General in the Carter Administration and had been a Federal judge in San Francisco for a number of years.

As frequently happens in large law firms, the matter was delegated to me by Mr. Renfrew. But I was not selected by the U.S.

Olympic Committee, or by Mr. Kline, who did not know me. So there was no particular reason for my selection. It was simply that I got the case by virtue of being associated with the firm.

Senator **Thurmond**. Mr. Walker, there have been a number of allegations made against you by the opposing counsel regarding your conduct in this case.

In order to clarify the record, would you please respond to these allegations? Now you have responded to allegation one. Now allegation two and three. Now I would like you to respond to this allegation.

As papers filed in support of the USOC's motion for preliminary injunction were untimely and without the consent of the court?

Mr. **Walker**. Well, that is incorrect. As I am sure each member of the committee who has been a practicing lawyer knows, in a preliminary injunction matter, where the event to be enjoined is only a few days off, filings are made virtually up to the very moment of the hearing. And that was the situation here.

There was never any filing made by us in that case that the other side did not have an opportunity to reply to, including those in connection with the preliminary injunction. Judge Peckham, Chief Judge Peckham of the northern district of California, afforded the defendants the full opportunity to respond to every point that was raised.

Senator **Thurmond**. Next allegation, that you acted improperly in renewing USOC's motion for attorneys' fees against the corporate sponsor, the Gay Olympics, but not the estate of Dr. Waddell, after the Supreme Court's decision of June 25, 1987.

Mr. **Walker**. Well, again, Senator Thurmond, there was nothing improper about that. As I indicated to Senator Leahy in my response, the U.S. Olympic Committee intended at all times to pursue the matter of attorneys' fees.

And it was only after a settlement was worked out that the Committee decided to abandon that decision.

At the time that motion was filed—this was after the Supreme Court's decision—the discussions on settlement were already underway. It was necessary, however, to file the motion, because there is a particular time limit in which motions for attorneys' fees have to be filed. It is a 60-day period after the entry of judgment.

And that period was expiring, and there was no precedent in the northern district that that could be extended by stipulation. There is no indication that was a jurisdictional—not a jurisdictional matter, and that any motion filed after the 60-day period would not be deemed to be untimely.

So that is the reason that the motion was filed after the Supreme Court decision.

Senator **Thurmond**. Another question. Mr. Walker, it has been alleged that you accused the defendants in the Gay Olympics case of malicious and fraudulent conduct.

How do you respond to this allegation?

Mr. **Walker**. That is simply not correct.

The allegations on the attorney fee recovery were that this was an exceptional case, and that the violations of the act which had been committed by the defendants were intentional, and were undertaken after the defendants had been apprised of the law by the

U.S. Olympic Committee, and were told the consequences, by the Committee, of what the violation of the law would be.

That was clearly an intentional act on their part.

I did not accuse them of the kind of malicious conduct which is referred to there. To the contrary, as I said in response to a question by Senator Leahy, I said at all times during the proceedings, to the press and to the court, our view that the acts of the defendants here, at least particularly Dr. Waddell, were well meaning and sincere.

They were trying to accomplish a purpose. It was regrettable to us that they sought to do so by acts which violated the Amateur Sports Act.

Senator THURMOND. Mr. Walker, there has been an allegation that the liens were used to harass the defendants in the case. How do you respond to this allegation?

Mr. WALKER. Senator Leahy of course has asked a number of questions along those lines. No, the decision to seek attorneys' fees here was made on the basis of the Committee's view that people who violate the Amateur Sports Act should be the ones held accountable for the cost of enforcement, if at all possible.

It was a decision, in essence, to further advance the statutory purpose of the Act by making those who made these enforcement actions necessary responsible for the cost of those enforcement actions.

So there was nothing malicious about it. In addition, the charge that there was some particular vendetta against Dr. Waddell is incorrect. And indeed, Dr. Waddell's lawyers knew even before I did that the U.S. Olympic Committee had decided not to seek recovery of those fees out of Dr. Waddell's personal assets.

So the allegation of maliciousness in this context, Senator Thurmond, is completely unfounded.

Senator THURMOND. Mr. Walker, has the USOC sued other organizations that have used the word "olympic" in conjunction with their athletic competition and events?

Mr. WALKER. They have, indeed. They have not only sued commercial infringers, those who are infringing for some commercial purpose, to earn a profit, but they have also brought actions against a number of nonprofit users.

I believe there was even an action initiated against the March of Dimes organization, certainly a nonprofit organization, and one that is a very worthwhile one.

But nevertheless, the U.S. Olympic Committee has been very vigorous in enforcing its rights under the Amateur Sports Act, as indeed it should be in order to protect the value of that trademark and those rights.

Senator THURMOND. Mr. Walker, it is my understanding that there is a large gay population in San Francisco. Do you feel that all individuals, including the gay community, can have confidence in your impartiality as a judge?

Mr. WALKER. I do. I have chosen to live and work in San Francisco for 16 or 17 years. It is, of course, a beautiful city, and one that I enjoy very much, and enjoy all aspects of that city.

I might say with reference particularly to this case, Senator Thurmond, my situation is one that you and other Members of the Senate are familiar with.

I was perfectly aware at all times how unpopular the position I was representing was, at least with a large segment of our community. And it is not a very pleasant job to be a lawyer for an unpopular cause in your hometown, any more than it is pleasant to take an unpopular position when you are a judge or when you are a Senator. But it is one of those things that has to be done.

It is, it seems to me, one of the things that the committee should look for in people who aspire to judicial office, whether they are willing to take stands that are correct legally even though they may be unpopular.

So I should think that there would be no question that I can be fair and impartial to all elements of the community in San Francisco, and look forward to it.

Senator THURMOND. I think you have now answered satisfactorily the allegations that have been alleged. And since you have been appointed by the President, and highly recommended here by Senator Wilson. Senator Wilson says you are a man of dedication and ability and character, and have the necessary qualifications to be a good judge, I would be glad to support you.

Mr. WALKER. Thank you very much, Senator Thurmond.

Senator LEAHY. Now that Senator Thurmond has taken the gloves off and hit you with all the hard-hitting questions and just pinned you down on them, we will go back to the softball questions.

Let me ask, your experience has been predominantly civil matters, is that correct?

Mr. WALKER. That is correct.

Senator LEAHY. What involvement have you had in criminal law?

Mr. WALKER. Very little. I have had some limited involvement. Most of it is several years old. But almost the entirety of my practice has been in civil matters.

Senator LEAHY. The court you are being nominated to is one of the most efficient in the country in moving a civil docket, but it is below average in the way it processes criminal cases.

And do you feel you can improve that situation? How do you approach a court which runs very well, admirably well, on civil matters, but is lacking in handling criminal matters?

Mr. WALKER. Well, personally, I recognize that I do not have a lot of background in criminal law matters, and this is an area in which I need to do a good deal of work.

I would of course first intend to take advantage of all the resources of the Office of United States Courts, which I understand has extensive and excellent programs to assist people in my position who come from a civil law background and go into the Federal courts, which must deal with a heavy calendar of criminal matters.

In addition, I do have some experience in knowing how criminal matters are processed in United States Courts, by virtue of having been a law clerk in the central district of California, which is based in Los Angeles, and having been familiar with the work of that court handling criminal matters.

The situation I confront, Senator Leahy, is not, as I am sure you recognize, an unusual one. Very many lawyers from civil private practice go onto the Federal bench.

And I would simply offer that I will dedicate myself to the efficient handling of criminal cases, and hope to improve the record of the northern district in that regard.

Senator **Leahy**. In the committee questionnaire we ask about a lawyer's professional responsibility to do pro bono work, help the disadvantaged and so forth. We asked you what you have done in that area. You said you had helped an immigrant family.

Do you have any idea how long that took?

Mr. **Walker**. That particular instance involved a number of different matters. And as I indicated in the questionnaire, some of that work was formally done in the office and some of it was not.

I think that response has been misinterpreted by some people. Some have pointed to my reference of that family as being the only thing that I have done in this regard. I pointed to that, however, because I wanted to delineate that kind of involvement from the involvement that I have had in more generalized public service and community service activities. A number of those have been through the Lawyers' Club of San Francisco which Senator Wilson addressed the Lawyers' Club has a number of programs to assist in the delivery of legal services to people of all levels of income. And yet I wanted to illustrate by palpable example a single instance in which I have undertaken to provide services on a very personalized level.

But I certainly do not wish to leave you with the impression that that is all I have done in that regard.

Senator **Leahy**. A lot of the legal work that you have done has been for large corporations, individuals with substantial business interest. We have talked about the Olympic Committee, which is a giant, non-profit organization. One of the witnesses that will be here this afternoon questions whether you have the life experiences that would enable you to impart impartial justice to both the rich and poor alike.

How do you respond to that? If what you have done has been predominantly a corporate law practice, that is not all that is going to come before your court.

Mr. **Walker**. No. That is correct. And it is incorrect to say that most of my practice is corporate. It involves business kinds of disputes, by and large, but these have not by any means been limited to corporate work, the matters in which I have been involved over the years.

Senator Wilson has touched on some of the matters that I have worked on in other areas. He mentioned some controversial matters and political matters which involved reapportionment, which was a big issue in California. That certainly is far removed from corporate law. And I have been very active in that field.

It seems to me that the real answer to your question and the criticism that has been posed has to be answered by the professional experience of the nominee. Senator Wilson has pointed out that I am a member of the largest law firm in California, and yet I was elected the President of the so-called alternative bar association in San Francisco, which represents solo practitioners and people in very small firms—the kinds of lawyers who most often deal with individuals who have very particularized and special problems, and they are often disadvantaged and do not have a great deal of resources with which to address their legal problems.

I believe as a result of that experience that I have demonstrated an ability to relate to lawyers trying to provide those kinds of services, have earned their respect, and, I believe, have served their needs. So I believe that is probably the best answer, Senator Leahy, to the question of whether my life experiences are adequate to the task of a U.S. district judge.

Senator LEAHY. Mr. Walker, shortly after your nomination was announced, one of the members of this committee received a letter from a former associate at your law firm opposing your nomination. You have been a given a copy of that letter. Let me read from one part of it.

> When I first met Mr. Walker in 1982, he persistently referred to a middle-aged, apparently female receptionist as "it" or "whatever it is" in a disparaging tone of voice. These references were made confidentially to me in a manner that invited me to chime in. I deduced that Mr. Walker thought the receptionist was actually male or had been a male, and that he considered it perfectly reasonable to make such a venomous remark to a mere stranger such as myself.

Do you have any recollection of that?

Mr. WALKER. I do not have a recollection of that, Senator Leahy, of that particular incident.

Senator LEAHY. You have seen the charge?

Mr. WALKER. I have seen Mr. Hightower's letter. Indeed, I have, and I appreciate the committee providing it to me.

I can tell you in response to it I find it difficult to recall who it is that the author of that letter might have in mind. He describes the individual as "apparently female," and there was no receptionist that I know that that characterization might apply to.

I do know that in our office in about 1982, we had a problem that a number of the lawyers were concerned about with the quality of receptionist services that we had. And there were quite a large number of us who attempted to rectify the situation and get some changes in personnel.

I do not recall anything approaching the specific instance that the author describes. I do not doubt that in the process I may have made a remark about a receptionist to this individual that, in the cold light of day, I should not have made or would regret or would not like to see repeated. But I cannot recall what it was, and I am quite sure it was not anything of the sort quoted in his letter.

In addition, Mr. Chairman, I think I should also point out that the author of that letter, I believe, is somewhat hyper-sensitive. The next point he raises in his letter is that I was rude and disrespectful in arguing a case in the California Supreme Court, rude and disrespectful to Chief Justice Rose Bird and then bragged about it. This is the second——

Senator LEAHY. And that you bragged about it?

Mr. WALKER. And that I bragged about it. This was his second point of criticism.

Well, I think the best answer to that, Senator Leahy, was provided by Chief Justice Bird herself. A few days after the argument, she sent me a letter and a photograph which was very nice and a very kind gesture, and I had that letter and photograph framed. And it has been hanging in my office ever since. It is a very nice gesture on her part, and this is completely inconsistent with a judge who feels that she has been treated in a rude and disrespectful manner. And it is completely inconsistent with the charge that I bragged about it to hang a letter of this kind in my office where it has hung for a number of years, until I brought it here to show the committee as evidence of the fact that I think the gentleman's charges are simply without foundation.

I will be happy to show you——

Senator LEAHY. I was not going to raise that particular point, but you have. And you have raised the question and given your answer.

Senator Heflin, did you have any further questions of the nominee?

Senator HEFLIN. What does the letter say? [Laughter.]

Mr. WALKER. Thank you, Senator.

The salutation——

Senator LEAHY. It says, "I hope I never see you again in my court. Do not do this again." [Laughter.]

Do you think it is going to be anything but complimentary?

Mr. Walker, I am sorry. Of course, you have the right to put it in.

Senator HEFLIN. I understand that Chief Justice Bird is very controversial.

Mr. WALKER. The salutation is handwritten: "Dear Mr. Walker, I thought you might enjoy having the enclosed photograph. It is an enlargement of a photo that appeared in the San Francisco's Examiner's news article concerning oral argument on the Sebastiani initiative. My best wishes to you. Sincerely, Rose E. Bird, Chief Justice."

I thought it was a very nice gesture of her, and it certainly does not suggest that she thought I was being rude and disrespectful to her.

Senator LEAHY. Senator Heflin.

Senator HEFLIN. That is all.

Senator LEAHY. Senator Thurmond.

Senator THURMOND. I have no more questions. I just want to congratulate you on having such a highly esteemed Senator here sitting beside you for several hours, standing by you, from California. He is a member of the Armed Services Committee. I served with him there. He is an able man there, too. We are very proud of him, and I congratulate you on having him stand by you like he is doing.

Mr. WALKER. Thank you very much, Senator Thurmond. Indeed, Senator Wilson's support has been one of the meaningful things throughout this entire matter, and I am profoundly grateful to him for that support.

Senator WILSON. Mr. Chairman, I did not quite hear what Senator Thurmond or Mr. Walker said. I wonder if you might ask them to repeat it. [Laughter.]

Senator LEAHY. I would also tell Mr. Walker that, as I have done with every—every—Member of the Senate in the Republican Party who has asked to have a nominee brought forth for a hearing, whether in order or out of order, I have done so. And, of course, when Senator Wilson requested that, I was happy to comply. When Senator Heflin made a similar request, having had to turn down Democratic Senators although never Republican Senators, I was happy to comply. Glad to have you both here.

I have no further questions. Do you have anything else you wish to say? We may have follow up questions, you understand, but I have none further at this point.

Mr. **Walker**. I understand, and I will be happy to address any follow-up questions that you may have.

I suppose simply for the sake of completeness, Mr. Chairman, I should point out with reference to a matter that you pursued in your interrogation, you referred to the exchange of correspondence between Ms. Dunlap and myself in January 1986 and February 1986. I believe one of the answers I gave was not as complete as it might be in pointing out that the offer which Ms. Dunlap was making at that time—this is a year before she demanded in writing that the liens on Dr. Waddell's property be addressed—that one of the conditions of the settlement was a dismissal with prejudice. So the offer was different from that which was ultimately entered into after the Supreme Court decision, when, of course, the binding effect of the Supreme Court decision was acknowledged by the defendants.

But I say that only by way of completing the record, and I appreciate the opportunity to be here and appreciate your courtesy in arranging this hearing.

Senator **Leahy**. Thank you.

Mr. **Walker**. I have enjoyed it, Senator.

Senator **Leahy**. Thank you, Mr. Walker. Senator Wilson, always good to see you.

Senator **Wilson**. Thank you very much, Mr. Chairman. I appreciate your courtesy.

[Further correspondence with the nominee follows:]

Rec'd 9/23/88

VAUGHN R. WALKER
P. O. BOX 7880
SAN FRANCISCO, CA 94120
(415) 983-1500

FEDERAL EXPRESS

September 22, 1988

Mr. Steven J. Metalitz
Chief Nominations Counsel
Senate Committee on the Judiciary
SD-224
Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Metaliz:

Enclosed are responses to the questions submitted to me with Senator Leahy's September 9 letter.

Should you or the Committee require additional information, I shall be happy to furnish it.

Very truly yours,

VRWalker

Vaughn R. Walker

Enc.

September 22, 1988

WRITTEN QUESTIONS TO VAUGHN WALKER

Question No. 1: In your testimony before the Judiciary Committee, you referred to the "very close vote" in the referendum last year on changing the by-laws of the Olympic Club to admit women to full voting membership. What was the vote count in that referendum? What role did you play in this referendum, and what actions did you take to advocate passage of this referendum?

Response to Question No. 1: When I received the referendum materials, I voted in favor of the proposals and advocated to a number of other members that they should do likewise. Unfortunately, that referendum was held on short notice with little opportunity for a consensus to form around the proposals. Moreover, the proposals included both by-law changes regarding membership and a proposed program of changes in rules governing use of the Club's facilities. The vote on the 1987 referendum was 1,540 in favor of the proposals put to a vote, 2,082 opposed. Based on discussions with other members, I formed the belief after the vote that by-law changes to eliminate discriminatory language, if voted on alone, would likely have passed and it was the short notice and manner of the negotiations out of which the proposals arose that aroused most of the opposition. As explained in later responses, the issue of discriminatory membership rules will be presented squarely for another vote in the near future.

Question No. 2: Your testimony referred to "negotiations with * * * a women's athletic club" and "discussions with other clubs to effect possible change in the voting membership status for women." With what club or clubs has the Olympic Club entered into such negotiations or discussions? What have been the results? What is the current status of these discussions? What role, if any, have you played in these discussions? How would these discussions, if successfully concluded, lead to a change in the voting membership status for women in the Olympic Club?

Response to Question No. 2: Shortly in advance of my appearance before the Committee on June 13, 1988, David P. Dawson, a former president of The Olympic Club who is a lawyer practicing in San Francisco and a personal friend, informed me that the president of The Olympic Club and the president of an all women-member club in San Francisco, were scheduled to meet to discuss a variety of matters. I understood from Mr. Dawson that merger or consolidation of the two clubs was one of the topics contemplated for discussion. I played no role in those discussions and do not know what actually occurred during them, but, in gathering information to respond to these questions, have recently been told by Mr. Dawson that these discussions of merger or consolidation are on-going but the women's club has specifically requested that its identity not be disclosed.

Question No. 3: You stated that there has been "much discussion in the club as to how to accommodate both men and women on a full, participating basis." When did such discussion begin? In what fora has it taken place (e.g., membership meetings, casual conversation)? How have you participated in this discussion?

Response to Question No. 3: Women have been social and athletic members of The Olympic Club for decades; I understand the Club has approximately 800 women members. There are women's locker rooms and other accommodations at the Club's country location and women members make extensive use of the Club's tennis, golf and social facilities there. Women members and guests have access to the main dining facilities in both the country and downtown locations. Informal discussion began in the last few years of affording women "full participating" membership in The Olympic Club. I have participated in such discussions on several occasions during the last few years. I have been told that this subject was discussed at Club board meetings beginning in the spring or summer of 1987. There was also a general membership meeting in October 1987 at which the subject was discussed, but I did not attend that meeting.

Question No. 4: You testified that "the club determined last year to begin a program of accelerated membership for blacks in the Olympic Club." How was that policy adopted, and what was your role in the club's adoption of it? How does the "program of accelerated membership for blacks" operate? You also testified that "a number [of blacks] have been recruited and are being brought into the club on an accelerated basis." What role have you played in this recruitment and accelerated membership processing of blacks?

Response to Question No. 4: Shortly before my testimony to the Committee, my partner Charles R. Ragan and Mr. Dawson informed me that the board of the Club had determined to advance on the waiting list several persons who are black and had been nominated for Club membership.

I am told by Mr. Dawson that at present there are four or five blacks who are now Club members. There are other blacks who have been proposed for membership and whose applications will be considered in the next several months, so the number of blacks in the Club should continue to grow. The Club has no quota of any racial or ethnic group for Club membership but, I understand, the board determined that in view of widespread misunderstanding of Club membership policies some efforts should be made to encourage interested blacks to join the Club, and this has been done. As stated elsewhere in these responses and in Mr. Robertson's letter to the Committee, I have beginning years ago advocated that this course be pursued.

I have also learned since my testimony that it is incorrect that The Olympic Club has never until recently had a black member. While the Club has not until recently had adult black members, I understand that several years ago a young black man was a juvenile member, the highest category of membership available to someone of his age. Under Club rules, this individual would, when he reached the required age, have automatically become a regular adult member of the Club with no further application or review process. The individual's family moved from the San Francisco area before he reached the age for adult membership and at that time the individual ceased affiliation with the Club.

Question No. 5: You testified that you think there were more than two black members of the Olympic Club in June of this year. How many black voting members does the club have now?

Response to Question No. 5: See Response to Question No. 4.

Question No. 6: You testified that "I have tried to act with other members in order to, first, change the attitude of those who were in governing positions in the club to bring about an atmosphere in which members of all racial minorities--not only blacks--would be brought into full membership in the club." Besides the incident addressed in the letter from Mr. Robertson, previously submitted to the Committee, what specific actions have you taken, alone or with other members, to change these attitudes and create this atmosphere? You further testified that "that has been a successful effort." Please explain by what standard you consider this effort to have been successful.

Response to Question No. 6: Over a period of several years, I have advocated that actions of the type mentioned in Response to Question No. 4 above be taken and this has now been accomplished. While it is impossible to recall all of the people to whom I advocated that these steps be taken, I recall discussions regarding Club membership practices in which I expressed my views with A. James Robertson, Leslie M. Lawrence, David P. Dawson, G. Stephen Jizmagian, Donald Casper, Edward V. King, Charles R. Ragan, Reginald D. Steer and Bruce A. Ericson, among others.

In addition to seeking to encourage minority memberships in the Club, I have also acted where I thought appropriate to ensure fair treatment of minorities at the Club. In 1980, for example, I believed that a white Club employee had acted in an abusive manner toward an Asian employee, so I wrote to the assistant Club manager with copy to the Club's president describing the situation, expressing my concerns about it and requesting action. A copy of my letter is Exhibit A and follows this page.

VAUGHN R. WALKER
P.O. BOX 7880
SAN FRANCISCO, CA 94120

May 29, 1980

Mr. G. R. Deitrick
Assistant Manager, City Clubhouse
The Olympic Club
524 Post Street
San Francisco, CA 94102

Dear Mr. Deitrick:

The almost invariably cordial and efficient employees of the Olympic Club contribute to making Club membership a pleasure. I have never had occasion to complain about any of the Club's employees. It is, therefore, with some reluctance that I register this complaint about Jim McCombs, one of the bartenders at the City Clubhouse.

Yesterday, while I was in the grill, Mr. McCombs made derogatory remarks to, and about, Young, a bus boy in the grill, referring to Young, in a loud voice, as a "God damn Chink." Among other things, Mr. McCombs expounded his racial attitude: "First, you give 'em a job and then they start trying to tell you how to do your own job."

This is not the first episode in my presence that Mr. McCombs has registered such views. On several occasions, I heard him call a previous bus boy in the grill a "Chink" followed by an assortment of racially motivated epithets. It was clear in all these instances that Mr. McCombs' remarks were not made in jest and obviously not taken in that vein by the objects of Mr. McCombs' derision. I feel confident that these are not isolated events.

What Mr. McCombs thinks of Asians is, of course, his own business. And on his own time, he can say anything he likes. But, on the job, in the presence of fellow employees and Club members, Mr. McCombs should have the decency to keep his bigotries under wraps.

EXHIBIT A

I would appreciate it if you would draw this complaint to Mr. McCombs' attention and point out that at least one Club member is distressed by the open expression of his abusive views on Club premises.

Very truly yours,
VRWalker

Vaughn R. Walker
G61-950

cc: Edward Molkenbuhr, Jr., Esq.
220 Montgomery Street, Suite 606
San Francisco, CA 94104

Question No. 7: You testified that you "were concerned about the club not being adequately representative of the community." Do you believe that the Olympic Club is now "adequately representative of the community"? Please explain what, in your view, would constitute adequacy in this context.

Response to Question No. 7: My concern about The Olympic Club's membership practices stemmed from the absence of any active black members and my belief that this fact might be the product of an unstated exclusionary practice. Several years ago, I held a similar concern about possible exclusion of Asians but at some point I learned that the Club had members who were Asian. Membership in The Olympic Club has always included people from very many walks of life and economic levels whose membership reflected a desire to participate in the Club's extensive athletic activities, which are the key rewards of membership. I have always felt strongly that no racial or ethnic group should be excluded from membership. By its recent actions which encourage blacks to join, the Club is now demonstrating that there is no arbitrary exclusion for race or ethnicity. By the actions described in Response to Question No. 10, I believe the Club will soon take significant steps away from the unequal membership status of women, another area of concern. These steps, while not as rapid as I would desire, reflect significant progress for the Club.

Question No. 8: You testified that, "until very recently, there has not been any substantial effort on the part of anyone to include both men and women in" the Olympic Club and a neighboring women's athletic club. With respect to the Olympic Club, when did the "substantial effort" to admit women begin? When and how did you become involved in this effort?

Response to Question No. 8: Substantial efforts to include women members on a full participating and voting basis began in July 1987 when the board formulated and presented the proposals described in Response to Question No. 1. I supported those proposals and urged others to do so as well as set forth in Response to Question No. 1.

Question No. 9: You testified that you had made "oral statements to the legal counsel, the individual who is representing the club, and to people who were on a legal committee of the club who were looking into these matters. I had a number of such statements, and those can all be verified." Please provide more details on the statements to which you were referring, including to whom they were made, when and under what circumstances they were made, and the content of the statements, and provide any available documentation concerning these statements.

Response to Question No. 9: The statements referred to were to Mr. Dawson, a former Club president, and Robert F. Kane who is representing the Club in the litigation which the City and County of San Francisco has initiated against The Olympic Club. I have spoken to Mr. Kane on two occasions about women's membership in the Club and on both occasions expressed my view that it was in the Club's best interest for women to be included as full voting members. I have spoken to Mr. Dawson more often on the subject but cannot recall the number of times. I have expressed the same views to Mr. Ragan who serves ex officio on the Club's legal committee, to Mr. King who has been active in some aspects of the Club's affairs relating to this subject and to Mr. Jizmagian who is a board member, among others. These statements were made at various times in face to face conversations in informal settings and, in the case of Mr. Kane, on the telephone. I have also prepared and sent to the editor of the Club magazine a letter expressing some of my views on the subject. A copy of this letter is Exhibit B and follows this page.

VAUGHN R. WALKER
P. O. BOX 7880
SAN FRANCISCO, CA 94120
(415) 983-1800

July 18, 1988

Mr. Roger Verran, Editor
Olympian
524 Post Street
San Francisco, CA 94102

Dear Editor:

The time has come to make voting and full membership privileges available to The Olympic Club's 800 or so women members.

There are many reasons I believe the Club should make this change: fairness, being only one. From the Club's point of view, the most compelling reason is enlightened self-interest. At least four points suggest that self-interest.

First, The Olympic Club's reason for being is sports. As women's role in business and professions has grown in recent years so, too, has there been a tremendous growth of interest in women's sports and increased participation of women in athletics. These developments have brought about better athletic competition and would do so in our Club. Today, young women are as likely to be interested in sports as young men. Our present membership practices date to an earlier time when this equality did not exist. We prevent, therefore, full accomplishment of the Club's basic mission by not extending full membership privileges to women.

Second, the majority of young professional and businessmen today no longer appear to favor single sex clubs. To those outside the Club we are developing a reputation as a sexist organization, which, however unfair, discourages the interest of many men in the Club.

Third, none of us need to be reminded that our former member Justice Anthony Kennedy found it impossible to reconcile his membership in the Club with his desire

EXHIBIT B

to advance in public service. I, too, have faced a similar dilemma, but it is not only Federal judges or nominees who are put on the spot. A lot of recent publicity aside, The Olympic Club has never been an "elitist" organization. We number among our members public servants who do not get a lot of limelight (e.g., police and firemen, FBI agents), many of whom are our best sportsmen and all of whom are next in line as targets of rules prohibiting or inhibiting membership in a single sex club.

Finally, "privatization" or cutting off non-member revenues seems the only reasonable way to comply with the San Francisco club ordinance. "Privatization" means either a radical reduction in the Club's budget or substantially increased dues and fees. Either course drastically alters the Club by denying its members important services and activities or making the Club too expensive for many of our most valued members.

We are shortchanging ourselves by not making women members fully equal to men in The Olympic Club. The many private clubs that have adapted to changing times by admitting women have made the transition with relative ease and benefit. We would be blazing no new trails but would do ourselves much good by following their example.

Very truly yours,

Vaughn R. Walker

Question No. 10: You testified that the Olympic Club is making "palpable movement" and "substantial progress" in the direction of admitting women to full membership. You also testified that in your view the club is "in the process of change" on this issue. What facts have led you to this conclusion?

Response to Question No. 10: The change and progress made by the Olympic Club is best reflected in the steps taken to ensure that all racial and ethnic groups are included in the Club's membership and the extensive discussion among Club members of including women on a full voting and participating basis. The Club's leadership has encouraged members to express their views on the subject through letters to the editor of the Club magazine and at meetings. In September 1988, the Club's president Donald A. Bering announced at a membership meeting that the Club's board will soon present a proposal to the membership to eliminate from Club by-laws the restriction of membership to "gentlemen" and any other language suggesting discriminatory membership practices, if upon a legal review such language is determined to exist. I understand that ballots and informational materials are being prepared for these by-law changes and that the proposal will be presented to the membership for a vote in the near future. I plan to support these changes and advocate that others do so as well. While I regret the relatively slow pace of developments in this regard, I favor that change through voluntary action. Such change requires continued participation within the Club by those who favor full membership participation of women.

Question No. 11: In the case of City and County of San Francisco v. The Olympic Club, San Francisco Superior Court No. 883-604, the plaintiff has alleged that the Olympic Club's membership policies systematically violate California state law (the Unruh Civil Rights Act) and the California Constitution.

(a) What formal or informal role, if any, have you played in the Olympic Club's defense of this lawsuit, or its assertion of counterclaims therein?

(b) In your opinion, do the Olympic club's membership policies, including but not limited to the exclusion of women from full voting membership, violate the Unruh Civil Rights Act and/or the California Constitution? Please explain the basis for your answer.

Response to Question No. 11:

(a) I have played no role whatever in this litigation.

(b) I believe it is inappropriate for a judicial nominee to express an opinion on pending litigation. Moreover, I have not studied the pleadings or arguments of the parties in City and County of San Francisco v. Olympic Club nor reviewed any of the evidence which has been or may in the future be introduced and am, therefore, not in a position to have formed even an informed impression of the issues. I know both Mr. Kane, the lead counsel for The Olympic Club, and Louise H. Renne, the City Attorney of the City and County of San Francisco; I consider both friends but, except for casual communications, I have not discussed the issues in the litigation with either of them in any detail. Both are extremely able lawyers who are taking strongly opposed positions in the litigation. I do not plan to take any role in the litigation and am confident that the issues will be duly considered by the courts. I do plan to work within the Club to effect the by-law changes described in Response to Question No. 10 and to ensure that the Club's membership and other practices do not discriminate on the basis of race, sex or ethnicity. I intend to take these steps regardless of the outcome of the litigation.

I declare under penalty of perjury that the foregoing is true and correct, except for those matters stated on information or belief and as to those matters I believe them to be true and correct, and that this declaration was executed at San Francisco, California this 22d day of September, 1988.

Vaughn R. Walker

Senator **Leahy**. We have two panels, and the first one is Ephraim Margolin of San Francisco, and Richard Kline of Washington, D.C. Mr. Kline, I understand, is ill, and we can submit questions to him.

Mr. Margolin, would you please stand and raise your right hand? Do you solemnly swear the testimony you shall give will be the truth, the whole truth, and nothing but the truth, so help you god?

Mr. **Margolin**. I do.

Senator **Leahy**. Mr. Margolin, did you have an opening statement you wish to make, sir?

TESTIMONY OF EPHRAIM MARGOLIN, ESQ., SAN FRANCISCO, CA

Mr. **Margolin**. I have a short statement, if I may.

Senator **Leahy**. Please go ahead. Just bring that microphone in.

Mr. **Margolin**. Can you hear me at this point?

By way of introduction, I am an attorney in San Francisco since 1962. I am a graduate of Yale Law School. I am a lecturer at the University of California in Berkeley for the last 7 years. Before that, I was head of CLE on criminal defense matters for Georgetown University in Washington. I am past president of the San Francisco Lawyers' Club, which, by the way, is an integrated board, has and always had women, minorities on it—not enough. We would like to have more.

I am president-elect of the National Association of Criminal Defense Lawyers. I was founding president of California Attorneys for Criminal Justice, the Criminal Defense Bar of California. I argued more than 100 cases in appellate court, different circuits, Supreme Court of California, and our court of appeals, member of the Academy of Forensic Sciences and so on. And I mention these things not because I represent those organizations; I do not. It is solely by way of identification.

I may add that I was general counsel of ACLU in northern California, and I am a lifelong Democrat, which makes it difficult for me to sit in a seat occupied by my predecessor, Senator Wilson.

Also, one-third of my practice always was and still is pro bono. However, pro bono can be defined in different ways. My pro bono is usually through amicus participation or through participation of lawyers and judges, occasionally politicians, who either cannot afford services of counsel or who need them because of a cause-related purpose.

Most of my colleagues do their pro bono through activities in the Bar. I consider that to be not less of an important contribution than the one that I engage in.

I am here to speak on behalf of Vaughn Walker whom I know well over 12 years. We served on the Board of Lawyers' Club together. I was president a couple of years before him. Under his administration, the first woman president is now in line for appointment. We have jointly made efforts to scour the countryside for people in the minority area, for women, for people with different lifestyles who may wish to come and join the board. It was difficult to get them, first of all, to come and join, and, secondly, to stay and attend to the meetings of the board.

Originally, I had thought that Vaughn and I would be on two opposite poles. We seemed to be opposite in every conceivable way: politics, social involvement, the size of the firm—everything that you can imagine. And gradually, I came to realize that we share not only a universe of discourse in constitutional terms, but also a universe of discourse in terms of sensitivity and caring.

I was quite pleasantly surprised to find a PM&S lawyer interested in plight of a private small practitioner who is going under. I was very pleased to be at the helm of the organization almost at the same time as Vaughn during the fight we had over our Supreme Court in which somehow we managed to steer the club in a way which was fair, was proper, did not break us apart, and yet made it possible for every point of view to be properly represented.

I opposed him in court twice, and I was twice on the same side with him on cases. When I opposed him, I found him a competent, capable, good lawyer. Needless to say, when I worked with him, the same was true.

Let me address one case, and then finish with a number of small concluding remarks. The case which brought me here to testify is the Olympic Committee case. After the district court judge rendered what I considered an outrageous decision, I was approached by Dr. Waddell and by a friend of mine, Zohn Artman, who is also deceased today, and I was asked to take over the case.

I read the pleadings, I reviewed the case, met with them, asked permission to call Mary Dunlap, and then asked permission to call Vaughn, since I knew him so well. I called Vaughn and I asked Vaughn—and we came from entirely different points of view, because I disagreed with what Vaughn was doing for his client. I still feel that Dr. Waddell was one of the saints of our generation, the way Mother Teresa is. There are some people who are beacons, and he was one of them, and I thought that what happened to him should not have happened.

When I called Vaughn, I wanted to know from him only one thing, and that was before the ninth circuit briefing: "Vaughn, it is possible that I am coming in to oppose you on this case. Can we settle the attorney fees issues?" And he said, "I cannot do anything without my client." And I said, "Can you talk to your client?" And I wanted to know that before I give an answer as to whether I am coming into the case.

He called me within a day. He said, "I am not free to tell you details, but my client is adamant and there can be no settlement."

I was satisfied at that point that there is nothing that I can do in talking to Vaughn in terms of his ability to override client's decision. I volunteered an amicus on behalf of the people who opposed Vaughn in court and filed it. I also recommended to the client that the client is very well served by Mary Dunlap, who is a good lawyer; and that as far as I am concerned, it is both unseemly and inappropriate for me to replace a good lawyer just on the eve of briefing and arguing in the ninth circuit.

They returned and asked me the same question again when the case went to the Supreme Court, and I gave the same answer.

My involvement with that case terminated after I filed my amicus. I do not recall at this point whether I did tell Mary, but I am sure that I told Dr. Waddell and Zohn Artman, that if there is anything that is needed of me or any assistance whatsoever, I will be glad to give it.

I did not receive any inquiry from anybody after that, and I have not done anything further in that area.

I am satisfied that what happened in this case—and I do appreciate the pain that goes into the opposition. But I am satisfied that what really happens here is the situation of the duty one owes to his client. It is the duty to do the client's bidding. Now, there are cases in which you reach a point and you resign. They are very rare, and most of us operate with that kind of approach in situations which are quite egregious.

What we have here is a man who was told how the client wanted the case to proceed and then was replaced towards the end. And the question, really, is the burden is on whom?

Now, are we going to say that a man who, for the last 12 or 12-and-a-half years that I know him, was shown to me as a good, careful, caring lawyer. I do not agree with his politics, but that is neither here nor there. Were I the president, perhaps my nominee would have been a Democrat. I do not know.

All I can say is that he was nominated, and he is a fair and a good human being. I cannot find a single prejudiced bone in his body. We have debated every argument that one can within the club. I opposed him on redistricting. These are pretty heated matters. And all I can say is that he at all times conducted himself with a temperament which befitted a good lawyer and will befit a judge, because the judge's function is different.

I also would like to say that I am not a member of the Olympic Club. I am a member of another club. My club had a men-only policy for a very long time. Last year, through the votes of some of us who cared, the club got integrated. It is a movement. I do not blame people for belonging to the club. I ask the question: When you belonged to the club, what were you doing about changing it? And if the person was doing things to change the club, it seems to me that they also serve who only stay in membership and try to change it. With apologies to the Bard.

Vaughn has an inquiring mind and an open mind to argument. As far as I am concerned, I would have been delighted to see a committed criminal defense lawyer nominated and placed on the bench. Yes, he does not have experience in criminal law. But I would much prefer to have somebody who admits to not having experience and by his track record is willing to learn than to have somebody who is so prejudiced in his approach that assuming the bench he will be no good to the public at large.

If there are any questions you would like to address to me, I will be glad to answer.

[Letter in lieu of prepared statement of Mr. Margolin follows:]

LAW OFFICES OF
EPHRAIM MARGOLIN
UNION SQUARE
240 STOCKTON STREET, THIRD FLOOR
SAN FRANCISCO, CALIFORNIA 94108

EPHRAIM MARGOLIN
NICHOLAS C. ARGUIMBAU
BRADFORD L. BATTSON

TELEPHONE
(415) 421-4347

February 4, 1988

Senator Joseph Biden
United States Senate
Washington, DC 20005

Re: VAUGHN R. WALKER

Dear Senator Biden:

I am writing regarding the nomination of Vaughn R. Walker to the United States District Court for the Northern District of California. I have seen a copy of a letter sent to you on January 29, 1988 by Jerome B. Falk, Jr., who is a close colleague and whom I also hold in high regard.

I volunteered to represent the defendants in the Gay Olympics case. I was invited to join as attorney for Dr. Waddell and after reviewing the case, I recommended that his lawyer was doing a fine job and there was no need for replacement. I did volunteer, however, an amicus brief which I filed on behalf of the defendants in the Ninth Circuit. Before I filed the brief I called Vaughn Walker, who represented the United States Olympic Committee, and urged him to forgive the attorney fees and costs. Vaughn promised to talk to his client. The next day he called me and advised that he did talk to his client and the client was adamant in the refusal to forgive the fees and costs. Knowing Vaughn as I do, I am satisfied that if the attorney/client privilege is removed, his file would disclose that he indeed tried all he could in order to assist Dr. Waddell and lighten his burden. I agree with Jerome Falk that it is unacceptable to fault a lawyer for representing his client vigorously and responsibly.

I have been opposing counsel to Mr. Walker twice in litigation; I have twice been on the same side. I have known him for almost ten years. As Past President of the Lawyers' Club of San Francisco, he was on my Executive Committee. I then served under him when he became President of that organization. I know that he tried to influence the Olympic Club in which he is a member to abandon restrictive policies against admission of blacks and women. Incidentally, the Olympic Club is the same Club to which Judge Kennedy belonged until his recent nomination. I do not know what record if any Judge Kennedy had for opposing the policies of the Club. From my long years of association with Vaughn Walker, I believe that there is not one prejudiced bone in his body.

I support the nomination of Vaughn R. Walker to the United States District Court for the Northern District. I do so from my personal conviction which, however, is also based on a lifetime of experience, including my position as President-Elect of the National Association of Criminal Defense Lawyers, my position as founding President of California Attorneys for Criminal Justice, General Counsel of ACLU/Northern California, and an adjunct lecturer at the University of California School of Law, Boalt Hall. I may add, since Mr. Falk was too modest to mention it himself, that Mr. Falk was President of the San francisco Bar Association. I join with him in my belief that your Committee, which performed sterling service for all of us during the Bork hearings, will extend fair treatment to Vaughn Walker, whose only fault of which I am aware appears to be that of representation of an unpopular cause.

Very truly yours,

Ephraim Margolin

EM/s

Senator **Leahy**. Now, I appreciate your remarks and your qualifications, and certainly we have heard them from others, but not all. There were 16 members of the Bar Association of San Francisco's, Judiciary Committee. They met to consider this nomination. Now, six of those 16 lawyers were unable to vote for any rating of qualified or higher. I understand if a majority votes qualified or higher, then nobody can vote not qualified. In his case, I believe three thought him well qualified, seven voted for qualified, and the other six did not vote.

What does that mean?

Mr. **Margolin**. I can only give you what I think it means because I was not present at the council.

One of the problems we have with practically everything that goes in the Bar Association in San Francisco is the lack of attendance.

Senator **Leahy**. Is what?

Mr. **Margolin**. Lack of attendance. On the last judicial plebiscite we had, the number of people who voted was insufficient—I mean who voted all together was insufficient to endorse the judge, or to reject him.

Senator **Leahy**. Do they have to all be there right at a particular meeting to vote on a judicial nominee?

Mr. **Margolin**. I am not a member of that committee, and what I will tell you will be my feeling but not knowledge.

Senator **Leahy**. Because my understanding of most of these things is they circulate the nomination among the members, so they all would have had a chance to vote. Do you know whether that is the case here?

Mr. **Margolin**. I can only tell you that if anybody on that committee felt that Vaughn is not qualified, you would have had it in spades. They are not a timid folk, and they know how to speak up.

Senator **Leahy**. They are not timid people?

Mr. **Margolin**. Yes, they are not timid. They are people of very strong opinions, with a range of opinions; and if they felt that they need to cast a vote against a nominee, they would have. They have done it before.

Senator **Leahy**. You discussed clubs and private clubs and membership. What would you think if Mr. Walker was confirmed as a Federal judge? Do you think under those circumstances he should remain a member of the Olympic Club?

Mr. **Margolin**. There is a difference, and I do not think it was alluded to today. When Justice Kennedy came before you and advised you that he resigned from the Olympic Club, he was a sitting judge in the ninth circuit for many years.

Senator **Leahy**. I understand. And I thought that point was made. But let us get to the specific of Mr. Walker. If he becomes a Federal judge, what sort of a message would it leave in your opinion if he were to remain a member of the Olympic Club as it is presently constituted?

Mr. **Margolin**. I would have strongly felt that he should not remain a member of that club because it is one thing to work on the inside to change things; it is something else once you are a judge to be in that process. At that point, the judge ought to be above it.

Senator **Leahy**. Now you mentioned that you would like to see somebody with experience in the criminal bar. We went into a little bit on pro bono, but there is not a great deal on Mr. Walker's record to show that he has provided legal services to criminal defendants, those who couldn't afford it.

He hasn't been a prosecutor. He hasn't had experience in that. Are those facts relevant to his qualification for the judgeship he seeks?

Mr. **Margolin**. I believe that when a lawyer is dedicated solely to the pursuit of money, he is not qualified to be a judge, or should not be qualified.

I believe that when a lawyer sets aside specific portions of his life, pro bono, for the good of the public, and whether he does that by going into neighborhood legal assistance; whether he does it by volunteering on a panel in which indigents are served; whether he does it by establishing that kind of a panel or supporting it; all of these are pro bono activities.

The 12 years that Vaughn spent with the Lawyers Club, or at least when I was involved with the Lawyers Club; it is more now; in those 12 years he registered votes which were strongly in favor of the small person, which were supportive of our efforts to end large services and provide them to those who could not afford it; and who took basically a decent, fair approach to things.

We didn't always agree.

Senator **Leahy**. What is an example of one of those votes, Mr. Margolin? Give me an issue.

Mr. **Margolin**. We had everything beginning with this administration's position on assistance to indigents generally, up to the question of whether lawyers ought to be licensed subject to specialization; the whole range.

Senator **Leahy**. Let's take the first one, the administration's position on counsel for the indigent. Did Mr. Walker agree with that position?

Mr. **Margolin**. Mr. Walker, who politically should be expected not to agree with it, and to hew to the administration's line, took a position which was a middle road position accepted by the club, to the best of my recollection.

Senator **Leahy**. Which was what?

Mr. **Margolin**. To support extension of such services. And I am sorry, that is only one example; but I could give you many if you wish.

Senator **Leahy**. Please feel free to expand the record. You will be getting back a transcript of this anyway, as all witnesses will, in case they want to add to their answers or correct anything. You have that chance.

And I would be appreciative if, once you see that particular question and answer, you may want to add to it.

Mr. **Margolin**. Thank you.

Senator **Thurmond**. Would you tell the committee what background you have in civil rights and civil liberties litigation?

Mr. **Margolin**. My inception as a lawyer was in that field. As a board member then chairman of ACLU northern California legal committee, and then general counsel for ACLU, northern California. And then before that as attorney for American Jewish Congress, I had litigated quite extensively in the area of equality, in the area of fairness, in the area of due process.

As a matter of fact, at one point, I did put together a sort of a summary—that was in the Carter administration. And I was considered at one point for an appointment to a higher court. And I put a summary together, and it basically read like a primer of civil liberties and civil rights.

Senator THURMOND. Mr. Margolin, would you tell the committee how long you've known Mr. Walker, and in what capacity?

Mr. MARGOLIN. I knew him on the Lawyers Club for about 12, 12½ years. I knew him opposing him in court. And I knew him working alongside of him in court.

Senator THURMOND. Mr. Margolin, in your dealings with Mr. Walker, have you had any indication that he would be biased or prejudiced against any minority group?

Mr. MARGOLIN. None whatsoever, or I would not have been here.

Senator THURMOND. Mr. Margolin, it is my understanding that you were involved in the gay Olympics case. Do you feel that Mr. Walker acted properly in representing the U.S. Olympic Committee during this litigation?

Mr. MARGOLIN. I am not privy to every single thing that happened between him and his client. From what I do know, and from what I observed during the period that I was involved with it, he was a vigorous advocate for his client, which is what lawyers are supposed to do.

Senator THURMOND. Mr. Margolin, based on your extensive experience, what type of judge do you think Mr. Walker would be?

Mr. MARGOLIN. I think he will make a fine judge. I think he will be fair and open. I think that he will have the, how should I put it, it is not only the intellectual ability to deal with a problem and recognize that every major problem has another side to it, but it is also the empathy that goes with the actual imposition of the law on the facts.

I have the feeling that he will be as deliberate as he was in his actions in the club, and I think that he will be less aggressive. Because as a lawyer you are supposed to be aggressive. As a judge, you are supposed to tone it down. And I think he has the capacity to do that.

Senator THURMOND. Mr. Margolin, do you feel that Mr. Walker has the integrity to be a U.S. district judge?

Mr. MARGOLIN. Yes, I do.

Senator THURMOND. Do you feel he has the judicial temperament to be a U.S. district judge?

Mr. MARGOLIN. I do.

Senator THURMOND. Do you feel he has the professional qualifications to be a U.S. district judge?

Mr. MARGOLIN. I do.

Senator THURMOND. Would you recommend to this Senate that they confirm him to be a U.S. district judge?

Mr. MARGOLIN. That's why I am here. The answer is yes.

Senator THURMOND. No other questions, Mr. Chairman. Oh, just a minute, Mr. Chairman, I have a letter here addressed to me from Mr. Richard G. Kline, counsel to the Olympic Committee. If I could read a few excerpts and then put it in the record.

I know, and everyone familiar with the representation of the Olympic Committee knows, that Mr. Walker at all times acted in an exemplary professional manner, and the accusations contained in the press accusing Mr. Walker of personal bias are untrue.

Another excerpt:

As an example of how those facts have been distorted, the U.S. Olympic Committee did not even approach Mr. Walker's law firm until after a decision had already been made by the Committee to seek the protection of the Federal courts.

Mr. Walker neither instigated nor promoted the litigation, but ethically responded to the direction of his firm's client.

Another excerpt:

After his law firm was selected by the Olympic Committee, Mr. Walker was retained to serve as local and trial counsel, acting under the direction of U.S. Olympic Committee's counsellor as chief legal adviser. In discharging his ethical duty to represent his firm's client, Mr. Walker sought, at the direction of the USOC counsellor, only such protection as is provided under Federal and California law.

One such instance, now the subject of controversy, was the filing of a lien against the assets of one of the named parties to the litigation. This was only done following the refusal of the defendants to post a bond pending judicial review of defendants' appeal.

The steps taken were not extraordinary. Indeed, they are provided for under California law for precisely that purpose. Upon remand, to the Federal District Court, Mr. Walker consistently and repeatedly communicated to the defendants' counsel the USOC's position that the lien was automatically vacated as a matter of law and no longer enforceable.

Another excerpt:

Following the affirmation of the Olympic Committee's rights by the Supreme Court of the United States, which the Olympic Committee pursued with separate counsel, Mr. Walker recommended settlement of the remaining issues in mid-August, 1987, in the attempt to avoid the need to pursue an award for attorneys' fees and damages against defendants.

The Olympic Committee concurred in that recommendation, and only the unrealistic demands and expectations of the defendants delayed an immediate resolution.

The settlement ultimately negotiated by Mr. Walker is almost entirely to the benefit of the defendants. It gave the Olympic Committee nothing more than they already had obtained through the litigation, litigation to which they were forced by the defendants' actions, including three separate judicial reviews by the Ninth Circuit, and certiorari by the United States Supreme Court.

Another excerpt:

I am surprised at the reports of attacks by defendants' attorney upon Mr. Walker, knowing that he recommended the settlements which would avoid burdening the defendants with an award of attorneys' fees.

Indeed, in defendants' letter of September the 22, 1987, to Mr. Walker, defendants' attorney thanked him for his courtesy and diplomacy in helping to avoid the potential exposure to a major monetary award in the action, a courtesy again acknowledged in letters of October 19, 1987, and October 22, 1987.

Another excerpt:

The Olympic Committee has only the highest regard for Mr. Walker's honesty, forthrightness, and professional ability. His concern for the letter and spirit of the law, including the effects on both parties, as well as his composure during the protracted and sometimes contentious proceedings demonstrate Mr. Walker's eminent qualifications for elevation to the Federal judiciary, and the Committee urges his prompt confirmation.

Mr. Chairman, I ask that this letter in its entirety be placed in the record at this point.

Senator **Leahy**. It is. I am sorry that Mr. Kline is ill, because I did want to ask him the question whether they did feel justified in holding off on releasing the lien on Dr. Waddell's home so he could prepare his estate plan.

[Committee correspondence with Mr. Kline follows:]

RICHARD G. KLINE
COUNSELOR

ROBERT H. HELMICK
PRESIDENT
DR. EVIE G. DENNIS
VICE PRESIDENT
STEPHEN B. SOBEL
VICE PRESIDENT
WILLIAM B. TUTT
VICE PRESIDENT
ANDRAS I. TORO
SECRETARY
HOWARD C. MILLER
TREASURER
WILLIAM E. SIMON
IMMEDIATE
PAST PRESIDENT

March 28, 1988

The Honorable Joseph R. Biden, Jr.
United States Senate
SR-489 Russell Senate Office Building
Washington, D.C. 20510-0802

Re: Nomination of Vaughn R. Walker, Esq.
to the United States District Court for
the Northern District of California

Dear Senator Biden:

Recently I read some newspaper articles that originated in the San Francisco Bay Area regarding the nomination of Vaughn R. Walker to the Federal District Court. The United States Olympic Committee considers the personal attacks contained in those articles to be unwarranted and unfortunate. I know, and everyone familiar with the representation of the Olympic Committee knows, that Mr. Walker at all times acted in an exemplary, professional manner, and the accusations contained in the press accusing Mr. Walker of personal bias are untrue.

As an example of how those facts have been distorted, the United States Olympic Committee did not even approach Mr. Walker's law firm until after a decision already had been made by the Committee to seek the protection of the Federal Courts. Mr. Walker neither instigated nor promoted the litigation, but ethically responded to the direction of his firm's client. At no time did any consideration of the defendant's preferences or personal lifestyle enter into any recommendation or discussion with regard to enforcement of the Committee's lawful rights - a fact acknowledged by the majority of the United States Supreme Court.

After his law firm was selected by the Olympic Committee, Mr. Walker was retained to serve as local and trial counsel acting under the direction of the U.S. Olympic Committee's Counselor, its chief legal advisor. In discharging his ethical duty to represent his firm's client, Mr. Walker sought, at the direction of the USOC Counselor, only such protection as is provided under Federal and California law. One such instance, now the subject of controversy, was the filing of a lien against the assets of one of the named parties to the litigation. This was only done following the refusal of the defendants to post a bond pending judicial review of defendants' appeal. The steps taken were not extraordinary; indeed, they are provided for under California law for precisely that purpose. Upon remand to the Federal District Court, Mr. Walker consistently and repeatedly communicated to defendant's counsel the USOC's position that the lien was automatically vacated as a matter of law and no longer enforceable. The USOC was then, and remains puzzled by the failure of defendants' counsel to take any administerial steps to clear title, if such was their true concern.

Following affirmation of the Olympic Committee's rights by the Supreme Court of the United States, which the Olympic Committee pursued with separate counsel, Mr. Walker recommended settlement of the remaining issues in mid-August, 1987, in an attempt to avoid the need to pursue an award for attorney's fees and damages against defendants. The Olympic Committee concurred in that recommendation, and only the unrealistic demands and expectations of the defendants delayed an immediate resolution. The settlement, ultimately negotiated by Mr. Walker, is almost entirely to the benefit of the defendants. It gave the Olympic Committee nothing more than they already had obtained through the litigation - litigation to which they were forced by the defendants' actions, including three separate judicial reviews by the Ninth Circuit and certerori by the United States Supreme Court. Principally, the delay was caused by early suggestions of defendants' attorney that the Olympic Committee abandon its judgment and dismiss its case with prejudice, hardly the posture of one discussion in good faith a settlement of the outstanding claims remaining after an adverse judgment which was sustained by the U.S. Supreme Court.

I am surprised at the reports of attacks by defendants' attorney upon Mr. Walker, knowing that he recommended the settlement which would avoid burdening the defendants with an award of attorney's fees. Indeed, in defendants' letter of September 22, 1987, to Mr. Walker, defendants' attorney thanked him for his courtesy and diplomacy in helping to avoid the potential exposure to a major monetary award in the action - a courtesy again acknowledged in letters of October 19, 1987, and October 22, 1987. That correspondence further acknowledged that Mr. Walker had no authority to settle the case, but that he had recommended settlement to his client on terms negotiated by Mr. Walker. As a consequence, I do not see how defendants' attorney can, in good conscience, attack Mr. Walker, and the reports must be distorted.

The Olympic Committee has only the highest regard for Mr. Walker's honesty, forthrightness and professional ability. His concern for the letter and spirit of the law, including the effects on both parties, as well as his composure during the protracted and sometimes contentious proceedings demonstrate Mr. Walker's eminent qualification for elevation to the Federal judiciary, and the Committee urges his prompt confirmation.

Sincerely,

Richard G. Kline

RGK/pj

cc: USOC

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

September 22, 1987

TO: John J. Hansen
PILLSBURY MADISON & SUTRO
225 Bush Street
San Francisco CA. 94120

RE: USOC et al. v. SFA&A
et al. C-82-4183 JPV

Dear John,

Greetings. As my message told you, my clients agree to dismiss their counterclaims with prejudice and to abide by the Supreme Court decision (subject to our seeking to change the law via Congress, and, of course, subject to our First Amendment rights to protest, criticize and associate to object to the decision and the lawsuit) and the injunction in the case, provided that your clients (both USOC and IOC) dismiss their claims with prejudice and stipulate in said request for dismissal that each party shall bear its own costs (including any costs previously awarded) and attorneys fees (including any attorneys fees previously awarded).

As I also mentioned on the phone with you last week my clients and I do not control the parties staging Gay Games III in Vancouver BC in 1990; although they presently have no plan or intent to assert a right to use "Olympic" in Canada, if they do so, we have made no agreement that in any way binds these separate and distinct persons and groups there. As I told you, this is always possible, and we do not want to be held responsible to USOC or IOC for anything that may be done there. Also, I do not waive my personal right to provide legal advice as to U.S. law to these persons, whatever they may decide to do (if anything) with the word "Olympic" in Canada. (See the enclosed article about Canada's non-interest in using "Olympic" as of this time.)

The revisions of your proposed joint press release on our end are few and important. The clause concerning "sexual orientation" is a gesture of peace for all sides; given that USOC answered our interrogatory on the issue of its policy as to gays that it does not discriminate on account of sexual orientation, I would think this language will be welcome on your end of this. I have filled out the last sentence to reflect the major terms of our agreement.

Perhaps needless to say, IOC must be a party to this agreement, in that IOC is a party plaintiff in the litigation. I hope this will not unduly delay putting the finishing touches on the agreement --- but it is an absolute necessity. We cannot run the risk of hidden liability to IOC, or of any unexposed disagreement between USOC and IOC as to this understanding.

We need to write up a stipulation embodying the mutual agreement to dismiss the entire action, with each party to bear its own fees and costs (including any fees and costs previously awarded to it). Then this can be filed so that the action will be dismissed with prejudice.

My clients per a majority of the Board voting on this question have endorsed the settlement as set forth in this letter and the enclosed joint release. We will also be preparing a separate release that recites our intention to continue to seek redress in Congress for the claim that we lost on in the Supreme Court.

Please do not hesitate to call if there are any problems with any of these matters. Thanks for your courtesy and diplomacy in this phase; I hope the next time our clients meet, it will be not as adversaries, but, as is true to the spirit of the International Olympic Movement, as co-operative agencies in the creation of olympic athletic opportunities for all.

Best regards,

Mary

MARY C. DUNLAP

c. Larry Sheehan, Acting Chair
Board, SFA&A

JOINT PRESS RELEASE

The United States Olympic Committee, the International Olympic Committee and San Francisco Arts & Athletics Inc. are pleased to announce the conclusion of the litigation concerning the Olympic Committees' objection to SFA&A's use of "Olympic" as the title of its athletic competition. On June 25, 1987, the United States Supreme Court upheld USOC's claim of exclusive rights to the designation "Olympic" for use in connection with athletic competition, under the terms of the Amateur Sports Act of 1978. In order to put these events in the past, and to go forward with the important task of developing amateur athletic opportunities for all athletes, regardless of sexual orientation, the parties have agreed to terminate the litigation at this stage. USOC and IOC will not pursue further legal action against SFA&A to collect attorney fees and other costs incurred in the lawsuit, and SFA&A will dismiss its counterclaims against USOC, and SFA&A and its agents will conform to the rights of USOC and IOC as confirmed by the U.S. Supreme Court, and will continue to obey the letter and spirit of the Court's opinion.

Contact:	John Hansen	(415) 983-7385
	Mary Dunlap	(415) 282-6555

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

October 19, 1987

TO: John J. Hansen
PILLSBURY MADISON & SUTRO
P.O. Box 7880
SF CA. 94120

RE: USOC et al. v. SFA&A
No.C-82-4183JPV

Dear John,

Thank you for confirming by telephone with me today that as far as you are aware, there are no problems with the agreement we reached last week, subject to getting certain documents back from your clients and your co-counsel, and thank you for your courtesy in agreeing that if the settlement documents in final form are not available for my signature by the date that my opposition to your attorneys fees motion is due (currently 10/22 by hand), I shall have until 10/29 to file and serve by hand any opposition thereto, and the hearing date shall be continued one week from the presently noticed date of hearing. I appreciate your considerateness in this matter.

Best regards,

Mary

MARY C. DUNLAP,
Attorney for Defendant SFA&A*/

---

*/ I did not list Dr. Thomas F. Waddell, deceased, as a defendant because I intend to file a notice of his death and move for dismissal of Dr. Waddell by the court, if it becomes necessary in this action.

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

October 22, 1987

TO: Vaughn R. Walker
John J. Hansen
PILLSBURY MADISON & SUTRO
P.O. Box 7880
SF CA. 94120

Re: USOC et al. v. SFA&A
C-82-4183 JPV

Dear Vaughn & John,

Hello. Pursuant to our telephone conversation this morning, you have graciously agreed to continue the motion for attorneys fees to November 19 or later, in light of the necessity of Board approval of the agreement that we have arrived at, in settlement of the above case. I understand and appreciate that your sense of the likelihood of agreement is not and cannot be a guarantee; I share the hope that the proper consensus can be reached this weekend so that we can end this litigation. Thank you for your thoughtfulness in letting me know what is going on.

Best regards,

Mary

MARY C. DUNLAP

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS

STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. [illegible]OOTEN, MINORITY CHIEF COUNSEL
R.J. DUK[illegible] SHORT, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 27, 1988

Richard G. Kline, Esq.
Counselor, United States Olympic Committee
One Farragut Square South, 7th Floor
Washington, DC 20006

Dear Mr. Kline:

I regret that illness prevented you from testifying before the Senate Judiciary Committee on June 13, 1988, on the nomination of Vaughn Walker to be United States District Judge for the Northern District of California. I hope that you have had a satisfactory convalescence and recovery.

In lieu of your testimony, your letter to Chairman Biden dated March 28, 1988 was placed in the record of the hearing. In order to supplement your testimony, I write on behalf of the Committee to transmit the following questions for your written response. In responding to these questions, you may omit any information subject to an attorney-client privilege, unless that privilege has been waived or is waived for the purposes of your response.

1. Do you have first-hand knowledge of the response of the United States and International Olympic Committees to the requests from Dr. Waddell's lawyers that the Committees take action to release the lien on Dr. Waddell's property? If so, do you have anything to add to the testimony already received by the Committee on this issue? (See enclosed transcript of the June 13 hearing, especially the following pages on which this issue is discussed: 51-83, 96-98, 111-127, and 144-157.)

2. When and how did counsel for the Olympic Committees, who were responsible for responding to these requests, first learn that Dr. Waddell was dying of AIDS?

3. The Committee record includes a letter dated March 24, 1987, from Bob Helmick, President of the United States Olympic Committee, to Peter Ueberroth, Commissioner of Major League Baseball (copy enclosed). The letter reads, in relevant part:

> "We are taking no action against Dr. Waddell or any of his property. Originally a lien had been filed on his home; however, it was released, and I have directed our attorneys not to reinstitute action even if authorized by the Supreme Court decision.
>
> "As you may know, the case is being argued in the United States Supreme Court today. At issue is whether we have the right to use the word "Olympic" with respect to an athletic competition. My personal view is that although we may need that clarification, we do not need to harass Dr. Waddell."

Does the letter accurately state the position of the United States Olympic Committee on the lien issue as of March 24, 1987? Was this position known to the attorneys responsible for responding to the requests from Dr. Waddell's lawyers? If so, how and when did they learn of it? In responding to these requests, what consideration was given to the position taken by the President of the USOC in this letter, or to other indications of the USOC's position which were known to the attorneys for the USOC?

Beyond your response to these questions, the Committee would be interested in any further comments you may wish to make concerning this nomination or any of the testimony received on June 13. As noted above, the transcript of that hearing is enclosed.

Please deliver your written response to the Senate Judiciary Committee, SD-224 Dirksen Senate Office Building, Washington, DC 20510, to the attention of Steven J. Metalitz, Chief Nominations Counsel. If you have any questions about this request, please direct them to Mr. Metalitz at 224-8191.

Your responses and other comments should be valuable to the Judiciary Committee in its evaluation of this nomination. I look forward to your prompt reply.

Sincerely,

Patrick Leahy

PATRICK LEAHY
United States Senator

bcc: Dick Schaap

ROBERT H HELMICK
PRESIDENT

ROBER
PRESID
DR EVE
VICE PR
STEPHE
VICE PR
WILLIA
VICE PF
ANDRA
SECRE
HOWAR
TREAS
WILLIA
IMMED
PAST P
GEORG
SECRE

RECEIVED BY
COMMISSIONER'S OFFICE
MAR 30 1987
By

March 24, 1987

Peter Ueberroth
Commissioner
Major League Baseball
350 Park Avenue
New York, New York 10022

Dear Peter:

Thank you for your recent note concerning Tom Waddell. I'm glad you brought this to my attention. I agree with you.

We are taking no action against Dr. Waddell or any of his property. Originally a lien had been filed on his home; however, it was released, and I have directed our attorneys not to reinstitute action even if authorized by the Supreme Court decision.

As you may know, the case is being argued in the United States Supreme Court today. At issue is whether we have the right to use the word "Olympic" with respect to an athletic competition. My personal view is that although we may need that clarification, we do not need to harass Dr. Waddell.

I hope all is going well for you. One of my great pleasures as President of the United States Olympic Committee has been working with a number of your LAOOC alumni who are assisting me inside the USOC, including Chuck Cale, Jay Flood, and David Simon. They are terrific.

With best personal regards,

Bob Helmick
President

RHH:bs

Rec'd 7/12/88 SJM

RICHARD G. KLINE
COUNSELOR

ROBERT H. HELMICK
PRESIDENT
DR. EVIE G. DENNIS
VICE PRESIDENT
STEPHEN B. SOBEL
VICE PRESIDENT
WILLIAM B. TUTT
VICE PRESIDENT
ANDRAS I. TORO
SECRETARY
HOWARD C. MILLER
TREASURER
WILLIAM E. SIMON
IMMEDIATE
PAST PRESIDENT

July 6, 1988

The Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, D.C. 20510-6275

Re: Nomination of Vaughn Walker

Dear Senator Leahy:

This letter addresses the questions contained in your letter of June 27 regarding the Federal District Court nomination of Vaughn Walker. Serving as Counselor of the U.S. Olympic Committee, I was responsible as the chief legal adviser for protecting the legal rights of the organization when challenged by Dr. Waddell in the "Gay Olympics" litigation.

1. As the record indicates, the lien on Dr. Waddell's property (which was sought only after judgment had been entered by the Chief Judge of the U.S. District Court in San Francisco and the defendants refused to post an appeal bond) was vacated by operation of law on entry of the Ninth Circuit Court of Appeals Order. The Olympic Committee subsequently agreed to reconfirm this, and did so when belatedly requested to do so by the attorney representing Dr. Waddell.

2. Although I do not recall the exact date when I personally learned of Dr. Waddell's illness, I never was informed by Dr. Waddell's counsel. My first knowledge of his illness came late in the case when I received a copy of a newspaper article mentioning that fact, long after Dr. Waddell and his counsel knew of the illness.

3. I did not receive a copy of Mr. Helmick's March 24, 1987 letter to Mr. Ueberroth. Mr. Helmick's letter accurately reflects the fact that the lien on Dr. Waddell's property had been released by operation of law before March 24, 1987, when the Ninth Circuit Order was entered.

Although I regret not being able to testify, I appreciate the opportunity to respond to your questions. Please let me know if I can provide additional information or be of further assistance.

Sincerely,

Richard G. Kline

RGK/pj
cc: Vaughn Walker

ONE FARRAGUT SQUARE SOUTH, 7TH FLOOR
WASHINGTON, DC 20006
(202) 393-5200

Senator **Leahy**. Senator Heflin.

Senator **Heflin**. During the time that you discussed going into this case, the Gay Olympics, and representing them, or Dr. Waddell, were you invited by both of them or just one of them? Or how was this——

Mr. **Margolin**. I was requested by Dr. Waddell to represent him. It would have meant representing the parties, not only Dr. Waddell, but also the committee.

However, after reviewing it and after discussion I just alluded to with Vaughn Walker, I reported back that I recommended against replacing the lawyer who was handling it.

I thought that Mary Dunlap is a good lawyer. There was no reason to replace her. She was about to take it to the ninth circuit and then to the Supreme Court, and she should have had her day in court. She deserved it.

I did not feel that it was proper to replace her with another lawyer, and this was my recommendation. And I did not become attorney in that case. I filed an amicus, a friend of the court brief, instead.

And that was on behalf——

Senator **Heflin**. In all of that, when you were involved at that time, did you hear any statement or remarks about a matter which would be derogatory? Did you hear any derogatory remarks about the way Mr. Walker was handling the case?

Mr. **Margolin**. No, I have not. I did witness the absolute bewilderment—maybe this is not strong enough a word—the absolute shock and horror at the decision of Judge Vukasin, both on the merits, and on the amount of attorneys' fees, that was ordered.

I personally felt that it was in the worst possible judicial tradition.

Senator **Heflin**. That was the judge; that wasn't Mr. Walker.

Mr. **Margolin**. That wasn't Mr. Walker; the judge who rendered the opinion.

Senator **Heflin**. When you were involved did Mrs. Dunlap or anybody else at that time make derogatory statements about the manner in which Mr. Walker was handling the case and representing his client?

Mr. **Margolin**. No, the matter did not come up. The question at that point was, who is behind insisting that the matter is not changed. I went after that. And I did call Walker to find out, and I found out there was nothing he could do.

Now, please remember, this is before the ninth circuit. This was early in the game, if that is the word to use. There was nothing that a lawyer could do. If he resigned, another lawyer would have done that.

Senator **Heflin**. Now, did you know anything about the laws—are you suggesting he was thinking of resigning?

Mr. **Margolin**. No, we did not discuss resignation over that, no.

Senator **Heflin**. Do you know anything about the law of California as to what happens when a judgment by a court of appeals, a Federal court, vacates a judgment? Whose responsibility is it to see that something is filed relative to the issue of the release of the lien?

Mr. MARGOLIN. It is a painful question to answer. I think that the responsibility is always with the people seeking relief.

Senator HEFLIN. Seeking the relief?

Mr. MARGOLIN. Seeking the relief.

Senator HEFLIN. The appeal, is that what you mean?

Mr. MARGOLIN. No, I mean by that the following. The issue of attorneys' fees, on which I submitted an amicus, was basically reversed in the ninth circuit. So we kind of won that portion of it; or rather, Mary won that portion of it.

Once this is reversed, one would expect that this will go back before the district court for further proceedings. The PM&S could have taken it to the district court—Pillsbury, Madison and Sutro, Vaughn's law firm—could have taken it back to the court, reinstituted the hearings, could have gone once again into the question of attorneys' fees, and chose not to. They have not done that.

Now, there was no further decision on attorneys fees after the ninth circuit vacated the original outrageous amount. At that point the question became whether or not the decision of the client concerning possible reinstituting of the matter in the district court is final or not.

Does the client want it reinstituted? I do not know how it worked between Mr. Walker and his client, but they did not reinstitute the case for attorneys' fees.

So what you did have is the lien, which was left hanging. But no return to the district court, in order to redetermine whether any amount at all was owing. It kind of died a natural death, the issue of attorneys' fees.

Now, the question becomes, who had the obligation, assuming it is not strategy we are talking about. Who had the duty at some point to prepare a document removing the lien?

And I do not know very many lawyers who would prepare such a document when their clients don't want that. I do know that if a document would come like that to me prepared by the other side, I would have the obligation to go to my client and say, I have the document sitting here; can I sign it?

And I believe this is what ultimately happened.

Senator HEFLIN. There may be some differences between the States. In my State, the obligation would be on the person who represents the person where the lien is filed against them to file a vacation, I mean, the instrument of vacation on this.

It may vary from State to State. It may be different in California than what it is in my State. But in other words, as you understand the facts, is there a display of a temperament that would be adverse to sitting on the bench?

Mr. MARGOLIN. There is none, as far as I see the facts. Mr. Walker, who was no longer the attorney at the time, because Washington attorneys were handling it, had no obligation at that time to initiate matters.

Now, different people work different in terms of how much we go out of our way and coerce our clients to action, I grant you that. Different people do it differently.

But perhaps today, with hindsight, one would have said, oh, heck, I should have flown to Washington and broke their arms. But the fact remains, someone else was the attorney for them at that time, and the fact remains that it was still possible for Waddell's lawyers to prepare the necessary document.

And that is very painful for me to say. Because the real issue before us ought to be only one: Is Vaughn Walker qualified to serve as a judge, and the answer is yes, by temperament and in every other way.

Did some people in the pain of what was going on do things perhaps not the way they should have been done? Probably. I would rather not deal with that issue. I think it is behind us.

Senator **Heflin**. I gather you have a great deal of respect for Mr. Walker, and you have a great deal of respect for the attorneys that represented Dr. Waddell and the gay Olympics.

Mr. **Margolin**. Yes, I do.

Senator **Heflin**. Have you known the lawyers that represented the gay Olympics and Dr. Waddell for a considerable period of time?

Mr. **Margolin**. I have known Mary for several years. I do not remember whether we had a case together, though I suspect that we probably did something together.

I did have some involvement with gay issues in San Francisco on the side of the gay issue. I do not remember myself ever opposing it.

I known Vaughn Walker much longer, and I have worked with him much closer. However, I respect the attorneys on both sides. And more than that, I would say that were it not for the fact that I think Vaughn is unjustly crucified, I am not sure that I would have been here.

I would have waited until the new president has an opportunity to make his own nominations; I would have waited for whatever comes down the road; I would not have raced to Washington.

But I think that what is happening here is important. Because if a person proves himself insensitive, and lacking in judicial temperament, don't confirm. But if a person is a fine example of lawyering, presents a fine concern for the public, does have a fair approach to things, and is nominated by a sitting president, then regardless of my politics, I do not think that you deny him the confirmation.

Senator **Thurmond**. I have no more questions. Thank you very much.

Mr. **Margolin**. Thank you very much.

Senator **Leahy**. Mr. Margolin, would you look at that one part in the record and send us whatever additional material you can?

Mr. **Margolin**. I will be glad to do that.

Senator **Leahy**. The next panel is made up of Mary Dunlap, Attorney, attorney Abby Ginzberg, and T.J. Anthony.

[Witnesses sworn.]

Senator **Leahy**. I would ask each of you, if you have an opening statement, and I would start with Ms. Dunlap.

TESTIMONY OF A PANEL CONSISTING OF MARY DUNLAP, ESQ., SAN FRANCISCO, CA; AND ABBY GINZBERG, ESQ., SAN FRANCISCO, CA; AND T.J. ANTHONY, SAN FRANCISCO, CA

Ms. **Dunlap**. Thank you, Senator Leahy.

Senator Leahy, Senator Thurmond, and staff, first of all, I probably have if not broken the barrier of the committee's word limit on filing statements, then come close in both the ABA judiciary letter which I prepared last fall, and the reply memorandum which I provided for the Senate Judiciary Committee this spring concerning those matters of Mr. Walker's qualification as to which I have, I believe, some experience and some information to offer.

And so I did not, for that reason, prepare any written testimony in advance of today in addition to those materials.

I think it is important for me to say first of all a little bit about myself, and then explain why I have become involved in opposing this nomination.

I have I think if I count right about 17 years practiced, primarily, I would say overwhelmingly, civil rights law, and predominantly for plaintiffs in the San Francisco Bay area. And I have also served as a Federal civil arbitrator; as a member of a panel for early evaluation of civil cases since 1985; and I have dealt very often and very frequently and with a great deal of depth with the northern district Federal court.

And I have the most profound respect for it as an institution, and for the judges who are its members.

It is for reasons having to do with my beliefs, and my experience, about the fitness of Mr. Walker as an individual, that I responded to an inquiry from Samuel Williams of the ABA Judiciary Committee with a lengthy memo defining what I believe to be the real, the surpassing inadequacies of this candidate as a Federal judge.

I wish to say a few words briefly here, as I did there, about the non-reasons for my—there my letter, and here my testimony.

There are certain inferences that one might draw from my appearing here, and also in those memos, as an adversary attorney; as one who had spent a number of years in a hotly contested and highly controversial, indeed, very visible case, one might draw the conclusion that I was opposing this individual out of something that I think Senator Wilson in his introduction alluded.

Having lost the gay Olympics case, bearing some bitterness or some sour grapes, I wish to oppose my adversary.

Let me say, as I told the ABA Judiciary committee, and I know to be true, that I know of a number of outstanding, primarily corporate, primarily civil defense oriented, chiefly downtown, and in many instances, white and male attorneys, who I would be proud to join in supporting for nomination to the Federal bench in San Francisco.

And I for one do not believe that whether they are Republican or Democrat should make the slightest bit of difference. That particular variable ought to be discarded at least at the courthouse steps, if not sooner.

Vaughn Walker is not among those people for reasons that are specific to his conduct in the gay Olympics case, and not through his having represented what he believed to be and what in some of the community is an unpopular client.

It was how he went about the representation of the U.S. Olympic Committee. And it is how now, and how in the process of becoming a judicial candidate, he has misrepresented the facts as to the lien placed on Dr. Waddell's land, and as to other matters, that make me confident in my view that he is unqualified to become a Federal district judge by reason of the factor that I think is of surpassing importance in any merit system: honesty.

I cannot think of a facet of a Federal judicial candidate's temperament that should matter more, whether it is by means of Senator Wilson's committee system, or any other mode of nomination, then whether a candidate is honest and truthful and does not seek to shade things in a direction meant to deceive or mislead.

Now, I do not say lightly, I say with great seriousness and with a degree of pain, that I have listened to Mr. Walker represent matters to this committee that are simply preposterous.

He has told this committee, for example, in a memorandum sent earlier this year, that for over a year after the ninth circuit vacated the attorneys' fee award—that would have been January 27 or so of 1986—Ms. Dunlap took no action, these are his words, to remove or vacate or otherwise release the liens.

It was with a degree of shock that I read that statement. Because I knew that I showed you from my files, and have provided it with the documents that establish that I not only telephoned but wrote Mr. Walker, in an effort to remove the liens at the earliest possible opportunity.

This committee has been told repeatedly, both in documentation and then by testimony by Mr. Walker today, that the liens were—and I want to use the exact language, because I think it is quite remarkable in its contrast to the reality—that the liens were wiped out, as it were, and I quote, that the liens were ineffective upon rendition of the ninth circuit judgment; and I could go on through my notes and I could give you several more examples that are in the testimony of Mr. Walker.

This is nothing short of either—well, I think there is a mixture here; it is both. There is a degree of misrepresentation about what those liens were and how they were effective that is phenomenal to me here.

Those liens were in effect on Tom Waddell's land until 6 days after Tom Waddell became deceased, died. He died on or about July 11 of 1987. The letter which Mr. Walker finally signed at Ms. Baer—Ms. Baer being Tom Waddell's probate attorney—repetitious behest, was signed on or about July 17 of 1987.

Now I read, and I hear Mr. Walker say that the liens were not in effect, were released, were lifted, were this, were that, were vacated. Now let me suggest that what is important here is not even ultimately the substance of the lie but its reason, but the motivation that Mr. Walker has now for offering it.

When the liens were placed on Tom Waddell's property back in late 1984, Tom Waddell was not a renowned and famous leader of the gay community nationwide dying of AIDS, whose life had been featured, among other things, on a report on 20/20 by Dick Schaap and on a piece of news programming by Tom Brokaw. I mention both those programs because they were both affected by the representations made not only by Mr. Walker but by his client about the nature of the liens.

I call the committee's particular attention to a letter which Ms. Baer, I believe, provided in a submission to the committee, and if not, I have a copy of it here and will gladly make it a part of the record today. And I read a portion of that letter which I think is of astounding importance in figuring out why the lie is being told about these liens having been removed.

This is a letter to Peter Ueberroth, familiar to us all in his capacity as commissioner of major league baseball, also important in this case in his involvement in the 1984 Los Angeles Olympics where he, among other things, rather vocally made it clear that he did not much care for the U.S. Olympic Committee's suit against Tom Waddell. And he went on record, apparently, and wrote a letter to the president of USOC making clear that he did not much favor what was being done to Tom Waddell.

And he got this, I read in relevant part. "We are taking no action against Dr. Waddell or any of his property. Originally, a lien had been filed on his home. However, it was released, and I have directed our attorneys not to reinstitute action even if authorized by the Supreme Court decision."

Now the members of this committee who are present today have been told by Mr. Walker, one, that it was the position of the U.S. Olympic Committee in the spring of 1987 when he was negotiating with Ms. Baer about getting a release, that it was the position of his clients that they intended to continue to pursue the attorneys fees which the client in March writes to Peter Ueberroth they have no intention to pursue.

All of this is important because it, in a monumental way, it demonstrates that Mr. Walker is a man capable of saying whatever he believes his audience wishes him to say, in a way that utterly contradicts the given facts of a case. And in this case, there is no ambiguity that there were liens on Tom Waddell's property when Tom was in his waning months and when his lawyer, Judy Baer, repeatedly sought a release. The liens were in effect. They were active. They were sitting in the county recorder's office where they had been placed years before.

Mr. Walker has what I consider to be the audacity to tell this committee that for over a year I took no action to remove those liens. Now lawyers act primarily in words and through letters and through phone calls. And I have presented to you documentation and my best memory on the actions I took, which include a telephone call I made to Mr. Walker within a week or two after the ninth circuit made its ruling, in which I asked Mr. Walker what was going to be done about the liens and mentioned at that point that a release was needed.

To Senator Heflin's question, if he were still here to hear my answer, I would have to say, it takes two to stipulate. There is no such thing as an ex parte, one sided, unilateral stipulation.

Senator Leahy. Senator Heflin, of course, will hear the answer because it will be in the transcript. Go ahead.

Ms. Dunlap. Thank you kindly, I appreciate it. And I meant no adverse comment about his absence. I mean only to make sure that this is outlined for him in the boldest letters that, one, I sought from the outset to get Mr. Walker to do that part of what was his responsibility. His clients had placed the lien on my client's land. My client had no unilateral legal capacity to remove it. I took every available action possible, short of making a motion to Judge

Vukasin. And my not making the motion has been copiously explained to this committee.

But in terms of my part in behalf of the defendants of getting those liens removed, I did all I could. And I was not alone. Judy Baer did all she could as well.

But far more important than the coerciveness, and I believe the inhumanity, of leaving those liens on a dying man's property are Mr. Walker's repeated and amazing misrepresentations of fact to this committee about the nature of those liens. Those liens were not released until he released them.

And the ultimate proof of that it seems to me, other than the documentation you have, is that here is Vaughn Walker testifying to you that the liens were released, were removed, were of no effect, et cetera. And he has done this in documentation, he did it in the media in an article in the January 7 Recorder in San Francisco. The lien was of no effect, he said.

If the liens were of no effect, then indeed why did two perfectly good lawyers—and I thank Ephraim Margolin for his account in that regard—Ms. Baer and myself, have to spend a year- and-a-half and tremendous energy on the phone and in writing to get Mr. Walker to sign off on a document releasing them? In short, I think the committee has been presented with a dramatic example of this judicial candidate's lack of candor.

Now in this case, to close, that lack of candor is also linked in a way that I found damning to a lack of compassion. Tom Waddell was dying of AIDS and Vaughn Walker was aware of it at least in the last few months before Tom Waddell died. It would have been, if not the easiest thing in the world then something close to it, for Mr. Walker to sign the releases that Judy Baer sent him months before he signed. It would have been the easiest thing in the world for him to send over a stipulation. It would have been the easiest thing in the world for him to write a letter, if a statement had been adequate for recordation, which was an open issue.

The point is this. Not just did Mr. Walker not do anything to have the liens removed, but he left them hanging over a dying man at a time when that man needed very much to know that his daughter was going to inherit his estate free and clear. And there has been no excuse offered, I think, for the inhumanity of those actions by Mr. Walker. I think the technical evasions offered really do not address the lack of compassion that his action shows.

I will not dwell on a number of other points, but I could. I will say——

Senator LEAHY. You may if you want, but you are now on Ms. Ginzberg's time and will soon be on Mr. Anthony's time.

Ms. DUNLAP. I will not take a second of her time. I would like her to go ahead. That is fine. Thank you.

Senator LEAHY. Ms. Ginzberg?

TESTIMONY OF ABBY GINZBERG, ESQ., SAN FRANCISCO, CA

Ms. GINZBERG. Thank you, my name is——

Senator LEAHY. Please understand, Ms. Dunlap, that additional material that you wish to add to your statement and all, you, as would Mr. Walker and Mr. Margolin or Senator Wilson or anybody else, will have opportunity to add to their statement in the record.

Ms. **Dunlap**. Thank you kindly.

Senator **Leahy**. Ms. Ginzberg.

Ms. **Ginzberg**. Thank you, Senator Leahy and other committee members, for this opportunity to appear before you today. I have been an attorney in practice for 13 years. I am currently in private practice. I have also been employed by both—been an attorney for both the Federal Government and the State government and have litigated in both the State and Federal courts in California. I also taught for 5 years at the New College of Law, and for a year at the University of California at Berkeley Law School.

I would like to make a couple of things clear. We are not, and the groups that I am testifying on behalf of today, are not opposing Vaughn Walker because of his clients. That is a red herring as far as we are concerned, and I think as far as Ms. Dunlap's testimony goes, she agrees with this. It is not because of who Mr. Walker has represented or might represent in the future that we are here today.

The groups that I represent are particularly concerned—and I would like to focus first on the Olympic Club issue. We are very concerned about having a current member of the Olympic Club elevated to the Northern District Court of California. We are also extremely concerned that the judges who are appointed to this court meet the highest standards of the legal profession. And if you look at, as I know you have, the ABA Standards for the Code of Judicial Conduct, this is obviously a questionable part of Mr. Walker's résumé.

I am not sure that Mr. Walker's representations about the current status of the Olympic Club are correct. I have been in touch with the attorney from the city attorney's office, which has now filed suit against the Olympic Club. As you may know, the city attorney gave the Olympic Club an opportunity back in June of 1987, and urged the club to quit its discriminatory practices voluntarily.

However, on October 7 of that year, that club's membership voted to reject the proposal to admit women to full membership. And today, according to the city attorney litigating this case, the firm representing the Olympic Club is aggressively engaged in litigating the club's right to discriminate.

The Olympic Club has now countersued the city. The litigation is going on. The city has now moved for sanctions against the club and there is little hope, according to this attorney, of any speedy resolution of this case.

I had lengthy discussions with the city attorney who is representing the city in this case, Mr. Riley. There was never an indication that the club is looking to currently admit women members. I have to say, the first I ever heard of the club's position that it is looking to integrate with another club consisting of women, I heard today.

And I think that deserves further investigation because, given the nature of the litigation as it stands in San Francisco—and the papers that I was provided by the city attorney were dated as late as May 31, 1988, and they summarize the ongoing litigation—this is a case which is being hotly contested by the club. And from the papers, it seems quite clear that the club is defending its right to exclude women as full voting members of the club.

I would also say that the Olympic Club—it would be bad enough had Mr. Walker said here today that—had he given up his membership prior to coming here today, and had he, in fact, claimed that he would give it up. We believe that the ongoing fight inside the club, given the club's current position, and given the fact that substantial resources on the part of the club's coffers are being used to defend their right to discriminate, puts Mr. Walker in a position of, as I say in my testimony, at least tacit endorsement of the club's decision to spend these thousands of dollars to defend itself.

We believe that if he had acted on principle, even if belatedly, it certainly would have helped reassure the thousands of potential litigants and lawyers, that he was sensitive to the stigma of the Olympic Club's closed door policy.

For civil rights litigators and litigants who have been forced to turn to the Federal courts time and again to seek enforcement of both title VII and the equal protection clause of the 14th amendment, the prospect of appearing before a judge who is a current member of the Olympic Club, or who traded his membership for a judgeship, does little to inspire confidence in the Federal judiciary. And it is of great concern to the female litigants and litigators who would be appearing before him.

I would also like to say something about the Bar Association of San Francisco. You asked a question, Senator Leahy, of how come six members did not vote that he was qualified. I do not think any of us can answer that. The deliberations of that judiciary committee of the bar association are completely privileged. We do not—we may know who the 21 members are of the overall committee. We do not know who the 16 were that actually voted on this nomination.

What we do know——

Senator **Leahy**. Let me ask you this. Do you know whether you have to be present to vote?

Ms. **Ginzberg**. Yes, I do know that. And not only that, I know that your committee was informed by the president of this committee, or the chair of this committee, that in fact they were present. How we know that there was 16 members present is that it is written in this letter to you dated April 18. It just says, "For your information, from the 16 members present, Mr. Walker receive 10 votes for qualified, three of the ten for well qualified." Therefore, doing the subtraction, we end up with six members that did not vote that he was either qualified or well qualified.

What we also have learned subsequent to the piece that was written in the Daily Journal, is that the way that the bar association's bylaws go, the votes are taken as to whether a candidate is qualified. Once a majority has reached the conclusion that he is qualified, that is the end of the voting. Therefore, whether these six members felt that he was either not qualified or not qualified at this time is not information that is available to us.

However, the presumption and assumption here is that these six members who did not vote that he was qualified, presumably thought he was not qualified. And what I think that means is that there is a split verdict in the legal community on Mr. Walker's nomination.

And although this committee is sworn to secrecy, or they would never be able to evaluate other judicial nominees, the conclusion here is quite obvious, which is that he did not get the unanimous rating of his peers, and this was after a thorough investigation that involved talking to his opposing counsel, to the people that knew him, to interviewing themselves, and to looking at and doing a thorough check of his background. So we find that quite troubling.

I find the combination of his current membership in the Olympic Club, the bar association's mixed review, the board of supervisors resolution in opposition to him——

And I would like to make one other comment about his pro bono practice. Mr. Walker had an opportunity when he was here before you to comment on the extent of his pro bono work. If there were other pro bono cases or other pro bono matters that he has handled, I believe they would have been in the application that was presented to this Judiciary Committee, or that he would have in the last hour told you what else could be credited to his pro bono account.

It is a badge of honor in the corporate legal community in San Francisco to do pro bono work. His law firm, many lawyers involved in the corporate legal community spend many hours working on pro bono cases in the course of a year, in the course of a legal career. It was astounding, I have to say, when I found out that he basically had not done any pro bono work.

His firm does quite a bit of it. And his firm does much to support the work of civil rights and civil liberties litigators in the Bay area who litigate on these issues. But it is important to note that the ABA requires that every lawyers participate in some legal work on behalf of the disadvantaged. I think that the distinctions that Mr. Margolin is drawing, that it is okay if you simply do something that enables someone else to do the work, is not what the intent of the ABA rule is requiring that every lawyer participate in some form of pro bono work.

We are extremely troubled in terms of someone's breadth of experience and their ability to judge civil rights and civil liberties cases that will be before him if in 16 years of practice there has not been any experience doing any work on behalf of the disadvantaged.

I would like to say just one more thing. In conclusion, we are concerned, as I said, that Mr. Walker has failed to meet the ABA's minimum criteria for judicial nominee. And those are minimum criteria. Those are floors below which both their own members should not fall and judicial nominees should not fall. And in the absence of rising to the level of meeting that minimum floor; namely, that one do some pro bono work on behalf of the disadvantaged, and that people also not be members of clubs that practice invidious discrimination.

It is clear from the city attorney's suit against the Olympic Club that this is an organization that up until 1968 had a bylaw that excluded blacks. Since then, it appears from the city attorney's papers, that the black members who now belong to the club have come in as a result of the ongoing litigation that has just come about. So the new members who have gotten in have come in in the last year in response to the litigation. The right to exclude women goes on.

We believe that somebody should not be elevated to the northern district of California who has ongoing membership in a discriminatory club, no record of pro bono work, and did not get the unanimous recommendation of the Bar Association of San Francisco. We believe that the people of the northern district deserve better and that so does the Federal judiciary.

Thank you.

[The prepared statement of Ms. Abby Ginzberg follows:]

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE

PRESENTED BY

ABBY GINZBERG, ESQ.

FOR BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

BLACK WOMEN LAWYERS OF NORTHERN CALIFORNIA

LEGAL ADVOCATES FOR WOMEN

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER

NATIONAL ORGANIZATION OF WOMEN, SAN FRANCISCO AND LOS ANGELES CHAPTERS

SAN FRANCISCO WOMEN LAWYER'S ALLIANCE

IN OPPOSITION TO THE NOMINATION OF

VAUGHN R. WALKER

FOR U.S. DISTRICT COURT JUDGE

June 13, 1988

TO THE CHAIR AND COMMITTEE MEMBERS:

Thank you Senator Leahy and Committee Members for this opportunity to appear before you to discuss the nomination of Vaughn Walker for judge of the U.S. District Court for the Northern District of California. This nomination has sparked unusual interest in the legal community, particularly among women and civil rights lawyers.

The groups on behalf of whom I am testifying represent over two thousand lawyers currently practicing in the Northern District of California, who are concerned that the judges appointed to the bench reflect the highest standards of the legal profession. Unfortunately, we do not believe that Mr. Walker should be confirmed for he has failed to meet these standards.

Supporters of Vaughn Walker have mischaracterized the reasons for opposition to the nomination. His supporters claim that he is being opposed for representing controversial clients, including the U.S. Olympic Committee and the National Rifle Association, and that he is being unfairly charged with holding his client's viewpoints.

In fact, Walker is not being challenged for representing the USOC. He is being challenged for his 14-year membership in the Olympic Club and for his lack of pro bono work. We believe these facts raise serious questions about his sensitivity to and his ability to judge, claims of racial and sexual discrimination which will routinely be presented to him as a federal judge.

According to the Justice Department the Northern District Court handled five hundred civil rights cases in 1987.

Our concerns about Mr. Walker's fitness for the bench would not be raised solely because a person represents controversial clients. All lawyers do that. Nor would we raise them solely because a nominee works for a corporate law firm. There are hundreds, if not thousands, of attorneys practicing in such firms in San Francisco, who, if nominated to the federal bench, would not elicit the opposition engendered by the Walker nomination.

CURRENT MEMBERSHIP IN THE OLYMPIC CLUB

Mr. Walker has been a member of the Olympic Club for the past fourteen years. His membership in a club which openly discriminates against women and racial minorities would be bad enough had he resigned from membership in order not to be in conflict with American Bar Association's Commentary to its Code of Judicial Conduct which states: "it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion." However, Mr. Walker is still a member of the Olympic Club. Moreover, he has stated in his application to this Committee that he will resign only upon confirmation or if told to do so by the Committee.

The Olympic Club is currently the subject of a highly publicized lawsuit by the City Attorney of San Francisco. The City Attorney is seeking an injunction against the Club's exclusion of women from membership under the Unruh Civil Rights

Act which prohibits discrimination in all business establishments. (Cal. Civ. Code sec. 51) The Olympic Club, with its multi-million dollar facilities provides its members with distinct social and athletic opportunities and privileges. Women and minorities have been systematically excluded from the benefits of membership. From its inception the Olympic Club was open to "only white male citizens of the United States of good moral character, integrity and reputation." While the "whites only" restriction contained in The Olympic Club's by-laws was officially removed in 1968, the discrimination against minorities continued in practice. At the time of the filing of the City Attorney's suit, no black had ever been an active member of the Club.

In June 1987, prior to filing suit, the City Attorney warned the Club that its discrimination against women and minorities violated the California civil rights law and constituted a material breach of the lease. The City Attorney urged the Club to end these discriminatory practices voluntarily. Nonetheless, on October 7, 1987, the Club's general membership rejected a proposal to admit women to full membership. The club is currently engaged in aggressively litigating its right to discriminate.* The Olympic Club has now countersued against the city and there is little hope of any speedy resolution of the case.

---

*In light of two recent opinions by the U.S. Supreme Court which held that private clubs with business-like attributes are subject to state laws banning discrimination, the Olympic Club has little likelihood of succeeding in its ongoing litigation. Board of Directors of Rotary International v. Rotary Club Duarte (1987) ___ U.S. ___, 107 S. Ct. 1940; Roberts v. United States Jaycees (1984) 468 U.S. 609, 104 S. Ct. 3244.

The subject of Judge Anthony Kennedy's membership in this club was the subject of questioning during his confirmation hearings. However, Judge Kennedy resigned following the Olympic Club's decision not to admit women because he stated "his position had become quite untenable." Moreover, during questioning by Senator Kennedy, Judge Kennedy agreed that the exclusion of women and minorities from these clubs is "stigmatizing" and "inappropriate." (p. 143)

In view of the ongoing controversy regarding the Olympic Club and the club's steadfast refusal to change its discriminatory policies, Mr. Walker's continued membership in the club raises serious concerns about his fitness for the bench.

Mr. Walker's failure to have relinquished this membership to date demonstrates active support for the club and its policies. Expressing "distaste" for the slowness of the Club's acceptance of minority members is of little comfort to the women and minorities who are currently excluded. And we have no confidence that the segregated lifestyle and world that is symbolized by this membership will not affect his attitudes and temperament as a judge. Mr. Walker's failure to have resigned from the Club in October, 1987 when its membership voted to uphold its discriminatory policies must be read as at least a tacit endorsement of the Club's decision to spend thousands of dollars to defend itself against the City Attorney's lawsuit. To have acted on principle, even if belatedly, would have helped reassure the thousands of potential litigants and lawyers that he was sensitive to the stigma of the Olympic Club's closed door policy.

It seems clear that the spirit as well as the letter of the ABA Code of Judicial Conduct is that the personal associations of members of the bench are open to close scrutiny to avoid any appearance of impropriety. However, it seems unlikely that the intent of the Code is to have potential nominees trade their memberships in discriminatory clubs for judgeships.

For civil rights litigators and litigants who have been forced to turn to the federal courts time and again to seek enforcement of Title VII and the Equal Protection Clause of the 14th Amendment the prospect of appearing before a judge who is a current member of the Olympic Club or traded his membership for the judgeship does little to inspire confidence in the federal judiciary.

LACK OF PRO BONO WORK

New litmus tests have not been created to judge Mr. Walker's candidacy. Rather in both his law practice and personal associations he has failed to live up to the American Bar Association's expectations for the legal profession. The ABA's Code of Professional Responsibility calls for every lawyer to devote time to serving the disadvantaged. In his fourteen years of legal practice Walker was able to identify only one family for whom he has done pro bono work. This is particularly striking because many of the corporate law firms in San Francisco, including Pillsbury, Madison & Sutro, do extensive pro bono work. Moreover, the ABA Code makes clear that it is the responsibility of "every lawyer, regardless of professional prominence or professional workload," to find time to undertake this work on behalf of the disadvantaged.

This ABA Canon summarizes the gist of one of our major objections to Vaughn Walker's candidacy. In establishing this ethical requirement, the ABA has established a floor below which the profession does not believe its members, much less judicial nominees should fall. The absence of such work in either his past or present legal practice has reinforced our concerns about Mr. Walker's sensitivity to issues facing the disadvantaged. It is not because of who he has represented, but rather because of whom he has not represented that we are troubled by Walker's nomination.

There is also grave concern in the civil rights community that Walker's nomination was the product of Senator Pete Wilson's all-white, all-male anonymous committee that has already placed four white men on the U.S. District Court bench in San Francisco. This court with eighteen judges currently has only one black, one female and one Hispanic judge. San Diego lawyer John Davies, the chair of Wilson's committee, has admitted that there were no women or racial minorities in the pool of potential candidates considered for this seat.

The Bay Area Civil Rights Coalition, whose member groups represent over 50,000 people living within the jurisdiction of the Northern District compiled statistics on the composition of the federal bench in Northern California. Of the 343 federal judges that President Reagan has appointed during the last eight years, only 14.3% have been women and minority appointments. Of Jimmy Carter's 258 judicial appointments, 33.7% were women and minorities. President Reagan's appointments to the Ninth Circuit and Northern District Court are particularly disturbing. Of the eight appointments he has made to the Ninth Circuit, seven were white males; one a white female. And of the four previous appointments Reagan has made to the Northern District, all have been white males. (See Addendum A)

As practitioners in the Northern District and Ninth Circuit, we have experienced firsthand the effects of the Reagan adminstration's plan to fashion a federal bench which is hostile to the civil and constitutional rights of minorities, women, gays and lesbians and other underrepresented groups. Our experience confirms the findings of the Commission on Minority Participation in Education and American Life entitled "One Third of A Nation." According to this report "In the last ten years, not only have we lost the momentum of earlier minority progress, we have suffered actual reversals in the drive to achieve full equality for minority citizens." The commission called for forging a "a new vision of affirmative action around which a broad national consensus can be formed."

In the meantime, it is left to civil rights and legal services lawyers to use the courts to correct the historical discrimination which has prevented women from joining fire departments, blacks from gaining promotional opportunities and gays from being discriminated against. For our clients to have a fighting chance of prevailing, it is imperative that the judges who hear these cases be unbiased, both in background and deed.

BAR ASSOCIATION OF SAN FRANCISCO EVALUATION

Vaughn Walker's failure to receive a unanimous recommendation from the Judiciary Committee of the San Francisco Bar Association casts further doubt on this nomination. According to the Senate Judiciary Committee, he received three well-qualified and seven qualified votes out of a total of 16. Although the by-laws of the BASF Committee terminate the voting once a majority finds a candidate qualified, it is clear that six members of the Committee did not vote that Mr. Walker was qualified.

This prestigious bar committee, which evaluates judicial nominees based on integrity and character, judgment and intellectual capacity, professional experience and judicial temperament, among other qualities, conducts a thorough investigation of the nominee. This decidedly mixed report on Walker should be given considerable weight since it makes clear that it is not only women's and minority bar groups that are opposed to the nomination, but members of the mainstream bar as well.

SAN FRANCISCO BOARD OF SUPERVISORS RESOLUTION

The nomination of Vaughn Walker for a judgeship led the San Francisco Board of Supervisors to pass a unanimous resolution in opposition to his confirmation. The resolution was passed following a hearing at which both proponents and opponents of Mr. Walker's nomination were given an opportunity to testify.

The Board of Supervisors, along with the many legal organizations on whose behalf I am testifying, believe that a lifetime appointment to the federal bench should be reserved for those members of the bar who have distinguished themselves in their legal practice, have earned the unqualified support of their peers and in both their personal and professional associations have conducted themselves with integrity.

The Board of Supervisors has made clear that they, on behalf of the people of San Francisco, do not believe that Mr. Walker has the public trust necessary for such an appointment. (See Addendums B and C)

Felix Frankfurter, writing in support of public scrutiny of Supreme Court nominees, stated:

> [T]he most relevant things about an appointee are his breadth of vision, his imagination, his capacity for disinterested judgment, his power to discover and suppress his prejudices.
>
> . . .In theory, judges wield the people's power. Through the effective exertion of public opinion, the people should determine to whom that power is entrusted.**

**F. Frankfurter, "The Appointment of a Justice", in Felix Frankfurter on the Supreme Court, 211, 216-17 (P. Kurland ed. 1970).

The same holds true for appointees to the lower courts, who are often the final arbiters of the claims before them. We are very concerned that a nominee whose only legal experience has been on behalf of the rich and powerful and whose personal associations reinforce these ties does not bring the breadth of vision or capacity for disinterested judgment that is and should be required of nominees to the federal bench.

In summary, we would urge you to reject Vaughn Walker's nomination. He has failed to meet the ABA's minimum criteria for judicial nominees, has failed to win the unqualified support of his peers and has been unanimously opposed by the Board of Supervisors. He should not be rewarded for his ongoing membership in a discriminatory club and his lack of pro bono work with a lifetime appointment to the federal bench. The people of the Northern District deserve better and so does the federal judiciary.

ADDENDUM A

STATISTICS ON GENDER/ETHNIC COMPOSITION OF JUDICIAL APPOINTMENTS

Carter Administration

Total Appellate/District Court Appointments: 258

**Total female/minority appointments: 87 (33.7%)*

Asians:	*1 (0.4%)*
Blacks:	*37 (14.3%)*
Hispanics:	*16 (6.2%)*
Women:	*40 (15.5%)*

**(Seven Black women were appointed by Carter; thus, for representational purposes, they are only counted once.*

Reagan Administration

**Total Appellate/District Court Appointments: 343*

***Total female/minority appointments: 47 (14.3%)*

Asians:	*1 (0.29%)*
Blacks:	*5 (1.5%)*
Hispanics:	*13 (3.8%)*
Women:	*29 (8.5%)*
Other:	*1 (0.29%)*

**(Reagan has appointed 43 percent of the sitting members of the federal judiciary.)*

***(Of the 29 women, two are counted as appointments to the District Court and again when they were elevated to the Appeals Court; in other words, there actually have only been 27 female appointments by Reagan to the federal judiciary, including one female appointment to the U.S. Supreme Court and one female appointment to Court of International Trade.)*

Northern District of California Appointments

Carter Administration:

During his presidency, Carter filled three vacancies on the bench in the Northern California District. All three, or one hundred percent, of his appointments were women or minorities: one white woman, Marilyn Hall Patel; one Black man, Thelton Henderson; and one Hispanic man, Robert Aguilar.

ADDENDUM A
STATISTICAL REPORT: THE FEDERAL JUDICIARY
PAGE TWO

Reagan Administration

During his seven years in office, Reagan has filled four vacancies on the bench in the Northern California District. He has selected all white males: Euegene Lynch, John P. Vukasin, Charles A. Legge, and Lowell Jensen.

There is currently a vacancy on the Northern California District bench. Reagan has nominated another white male: Vaughn R. Walker.

All told, Reagan has appointed NO women or minorities on the Northern California District bench.

Ninth Circuit Court of Appeals

Carter Administration

Carter appointed 12 judges to the Ninth Circuit Court of Appeals during his presidency. Of these, three were women, four were minority men, and five were white males. Women: Betty B. Fletcher, Dorothy W. Nelson, and Mary M. Schroeder. Asian: Thomas Tang. Blacks: Cecil F. Poole and Jerome Farris. Hispanic: Arthur L. Alarcon. White males: William C. Canby; Procter Hug, Jr.; William A. Norris; Harry Pregerson; and Stephen Reinhardt.

The seven women and minority appointments to the Ninth Circuit by Carter represents 58 percent of the total made by the former president.

Reagan Administration

To date, Reagan has appointed eight judges to the Ninth Circuit Court of Appeals: seven white men and one white women. The white male appointees are: Robert Beezer, Melvin Brunetti, Alex Kozinski, John T. Noonan, Judge O'Scannlain, and David R. Thompson. The white female appointee: Cynthia Holcomb Hall.

The one women selected by Reagan represents 12.5% of the appointments.

ADDENDUM A

CARTER/REAGAN COMPARISON STATISTICS

OVERALL FEDERAL JUDICIARY APPOINTMENTS

	Carter	*Reagan*
Total:	*258*	*343*
Asians:	*1 (0.4%)*	*1 (0.29%)*
Blacks:	*37 (14.3%)*	*5 (1.5%)*
Black Women:	*7 (2.7%)*	*--*
Hispanics:	*16 (6.2%)*	*13 (3.8%)*
Women:	*40 (15.5%)*	*29 (8.5%)*
Others:	*--*	*1 (0.29%)*
Women & Minority Totals:	*87 (33.7%)*	*49 (14.3%)*

NORTHERN DISTRICT COURT APPOINTMENTS

	Carter	*Reagan*
Total:	*3*	*4*
Asians:	*--*	*--*
Blacks:	*1*	*--*
Hispanics:	*1*	*--*
Women:	*1*	*--*
Others:	*--*	*--*
Women & Minority Totals:	*3 (100%)*	*0 (0%)*

NINTH CIRCUIT COURT OF APPEALS

	Carter	*Reagan*
Total:	*12*	*8*
Asians:	*1*	*--*
Blacks:	*2*	*--*
Hispanics:	*1*	*--*
Women:	*3*	*1*
Women & Minority Totals:	*7 (58%)*	*1 (12.5*

ADDENDUM B

FILE NO. 178-88

RESOLUTION NO. 123-88

OPPOSING THE NOMINATION OF VAUGHN R. WALKER TO THE FEDERAL COURT OF THE NORTHERN DISTRICT OF CALIFORNIA

WHEREAS, Vaughn R. Walker's experience as a trial attorney has been limited to only three appearances before juries; and

WHEREAS, Mr. Walker has not handled any criminal matters in his years as an attorney; and

WHEREAS, Mr. Walker's sole experience with respect to civil rights legislation was to aggressively pursue the lawsuit of the United States Olympics Committee seeking to deny the use of the word "Olympics" by the "Gay Games;" and

WHEREAS, Mr. Walker went beyond the bounds of necessity and decency by securing a judgment against Dr. Tom Waddell and the Gay Games organizers, and placing a lien on Dr. Waddell's home when Dr. Waddell was battling his own AIDS diagnosis; and

WHEREAS, Mr. Walker refused to remove the lien against Dr. Waddell's home despite the fact that the courts had suspended the award which brought it about, and refused to remove the lien until after Dr. Waddell's death; and

WHEREAS, Mr. Walker consistently denied that the lien was in effect in total neglect of the truth; and

WHEREAS, Mr. Walker appears to have little regard for the life experiences of the average American, as evidenced by his having accepted in his years of law practice only one pro bono case; and

WHEREAS, His limited experience as an attorney, his lack of judicial experience, his seeming lack of integrity and his lack of compassion do not qualify him for the duties of a Federal judge; now, therefore, be it

RESOLVED, That the City and County of San Francisco opposes the confirmation of Vaughn R. Walker to the Federal Court of the Northern District of California; and be it

FURTHER RESOLVED, That copies of this Resolution be transmitted for signature to the Mayor, with the request that additional copies be sent to our representatives in the Fifth and Sixth Congressional Districts as well as to our United States Senators.

Adopted - Board of Supervisors, San Francisco February 16, 1988

Ayes: Supervisors Britt Gonzalez Hsieh Maher Nelder Silver
Walker Ward

Absent: Supervisors Hongisto Kennedy Molinari

I hereby certify that the foregoing resolution
was adopted by the Board of Supervisors
of the City and County of San Francisco

John L. Taylor
Clerk

File No.
178-88

Date Approved

Mayor

- -

February 29, 1988

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limitation as set forth in Section 2.302 of the Charter, becomes effective without his signature in accordance with the provisions of said Section 2.302 of the Charter.

John L. Taylor
Clerk

File No. 178-88

ADDENDUM C

President
Board of Supervisors
City and County of San Francisco

NANCY G. WALKER

May 23, 1988

Senator Patrick Leahy
Senate Judiciary Committee
U.S Senate
Washington D.C., 20510

Dear Senator Leahy:

As President of the Board of Supervisors, I want to once again bring to your attention resolution no. 123-88 which went into effect February 29, 1988 opposing the nomination of Vaughn R. Walker to the Federal Court of the Northern District of California.

Abby Ginzberg will be testifying on behalf of various legal groups and organizations. I believe that Ms. Ginzberg will fairly and accurately represent the sentiments of the Board of Supervisors as well as San Francisco's diverse communities.

Thank you for being receptive to the testimony Ms. Ginzberg will offer on behalf of San Franciscans.

Sincerely,

Nancy G. Walker

Nancy G. Walker

NGW/kmk-2122y-065

Room 235 • City Hall • San Francisco, California 94102 • (415) 554-5943

Senator **Leahy**. Thank you, Ms. Ginzberg.
Mr. Anthony.

TESTIMONY OF T.J. ANTHONY, SAN FRANCISCO, CA

Mr. **Anthony**. Thank you, Mr. Chairman. My name is T.J. Anthony and I welcome the opportunity to appear before you. For 7 years I was honored to work with your colleague, Senator Don Riegle. My job included connecting rural citizens with their government in advocating for small towns. Since that time, I have served as the executive director of the Michigan Organization for Human Rights, which is chaired by Bishop Coleman McGee. And I also worked for a year out of former Republican State Representative Jim Dressel's office on civil rights legislation.

But today my roles are reversed. Rather than listening to the pleas of citizen, I am a citizen here, Senator, with a plea, and I am here with a plea on behalf of a number of citizens that are reflected in my testimony, the groups. We come as individuals and through community groups, including the NAACP of San Francisco, the Black Leadership Forum, the Rural Citizens Network, the Bay Area Women's Alliance, the United Farm Workers, the Retail Clerks' Union, the Lesbian and Gay Leadership Conference, Black Women Organized for Political Action of East Bay, the Women's Issue Forum of the San Francisco Women Building, the weekly newspaper, Coming Up, the Hotel and Restaurant Workers' Local 2, Jewish Women of East Bay, and the FAMA Task Force on the Judiciary.

I also want to note, as you have done earlier, Senator, that the city and county of San Francisco unanimously voted to urge this Senate to reject Mr. Walker's nomination.

I know that Senator Wilson had made reference to the fact that there was some controversy with regard the gay Olympics and the U.S. Olympics coming to San Francisco and that there was a ballot proposition. It should be clearly understood that the people who voted to put the proposition on the ballot were some of the same people that to urge this committee to urge this committee to reject Mr. Walker. So you are getting a solid position from the city of San Francisco.

Specifically, I would like to just skip through since you have my written testimony, and go over to some of the major points that we would hope the committee would look at. With regard to failure to disclose, Mr. Walker was asked by this committee if he ever held a position or played a role in a political campaign. He replied in a sworn statement by saying that his campaign roles have been limited to being "listed as a supporter on dinner committees and on committees for various events."

The evidence now shows that Mr. Walker's roles were more substantial than simply lending his name for use on invitations. That Mr. Walker specifically failed to note that he actually was fundraising for a number of candidates.

Now, Senator, I have to tell you, I have my name listed on politicians' invitations and events all the time. In fact, one of the persons that Mr. Walker's lists as having his name listed on, I also had my name listed on. But, Senator, I must tell you, having my name listed and actually going out and raising money is two different things. And I do not think that Mr. Walker has fully disclosed to this committee, in a truthful way, exactly the extent of his activities which could perhaps give citizens a sense that maybe there is more to the reason for his selection than his qualifications.

So we would like the committee to inquire of Mr. Walker whiie under oath why he concealed from the Senate the extent of his roles in these campaigns.

Now with regard to Mr. Walker's background. As a citizen and the people—you know, we are not lawyers and we cannot figure out all the complexities and the appropriate sort of qualifications and qualities that one might look for in a judiciary or a jurist, but you can have some sense of what it is you want out of justice and what you want out of courts. I must tell you that it is our sense that Mr. Walker really has a very limited, shallow sort of background.

Most lawyers agree, and the lawyers that I talk to—and I work in a law firm—most lawyers agree that judges should come with strong litigation background, with strong experience in the courtroom. In fact, one of the sitting judges in San Francisco who was appointed by this administration has said, one of the qualities that he found most necessary as a judge was having that kind of experience.

The fact is Mr. Walker has only argued before a jury twice in his life, yet he will be expected to impanel juries. He has almost no experience in civil rights cases, although the court has handled 500 civil rights cases in 1987 alone. He has virtually no experience in criminal cases, yet the court handled 1,000 criminal cases in 1987 alone.

I also would like to make reference in terms of his narrow legal advocacy experience. Mr. Walker has restricted his legal experience to advocating only for powerful interests. If it is true that people are the sum total of their life experiences and those experiences shape attitudes and perceptions, then many Californians have reason to worry about Mr. Walker. He has argued for the rights of employers over workers, landlords over tenants, agribusinesses over farm laborers, major institutions over small non-profits.

Now the objection is not to any specific client that Mr. Walker may have represented but to the narrow interests that form his entire legal experience and perceptions. At no point in his law career has Mr. Walker sought to broaden his perception of the law or the community through the legal services to and interaction with minorities and the disadvantaged. And I might note to the committee that minority people comprise 40 percent of the population of the northern California judicial district.

If Mr. Walker's sole source of income and contact is with powerful groups, there is little reassurance that he can fairly decide cases where the interests of the powerful collide with the powerless. Former Supreme Court Justice Felix Frankfurter once observed that the ultimate determinant in the quality of individuals to serve on the bench, among other things is, "their whole outlook on life, their experiences and their ability to transcend their experiences."

Mr. Walker's outlook on life is narrow and thus, necessarily limits his perception of the law and people. The reality is that Mr. Walker has spent his days for 16 years advocating for powerful interests. He has spent much leisure time in a club that intentionally discriminates against substantial members of our community. Mr. Walker has, by his own choice, limited his view of the world and his frames of reference.

Finally, this is I think an important issue, and that deals with the issue of the court imbalance. Mr. Walker's placement on the bench would perpetuate and exacerbate the harmful and gender imbalance that has always existed on the northern California bench. The fact of the matter is, Senator, we have 18 sitting judges. Of the 18 sitting judges, we only have one female member. We have one Hispanic, one black. There is no Asian judge sitting on the bench despite the fact that in the city of San Francisco alone Asians comprise more than 35 percent of the population.

Now if you break this down, if women are 52 percent of the northern judicial district population, they represent 1.8 percent of appointments. This is absolutely atrocious. Then if you break down the minority representation of the judicial district, minorities comprise only 3.6 percent. Yet Mr. Walker has nothing in his history to demonstrate an outreach, an understanding, a compassion, a sensitivity for minorities and women. In fact, he belongs to an organization that excludes them. And he has shown nothing in his legal experience or advocacy that has some sense of compassion or inclusion.

So finally, Senators, I just want to conclude by saying that Mr. Walker lacks personal ethics which the others, the attorneys here have articulated for you. He has limited legal and life experiences. And his appointment would exacerbate the harmful racial and gender imbalance on the northern California Judicial District Court.

We believe that we can and must do better. I am no lawyer, and I am not qualified to walk through the legal jargon and the protocol of litigation, or to the finer points of the appropriate ethical standards. I do know what seems fair, what seems honorable, and what seems just. Vaughn Walker's nomination represents none of this. For the thousands of Californians that I represent here today, I urge you to reject this nomination.

Senators, for my daughters, as a father who would never want to know that my daughters would have to go through what Tom Waddell's daughter went through and the treatment of a dying man, I urge you to please reject this nomination. I think that we want men and women on the bench of compassion, of insight, of sensitivity. We want those kinds of people to grace our courts.

And I only have to say to you, when I had a conversation with Ephraim Margolin, and he and I and his good friend Dr. Maggie Rubenstein and John Wall, and Ephraim told us, he said, Well, I certainly would not have picked him. He certainly would not have been my choice. But you know, you have got to take what you can get.

Senators, I do not think we have to take what we can get. I think we do deserve better, and the people of northern California thank you.

[The prepared statement of Mr. T.J. Anthony follows:]

TESTIMONY PRESENTED BEFORE

THE U.S. SENATE COMMITTEE ON THE JUDICIARY

BY

T.J. ANTHONY

ON BEHALF OF NUMEROUS COMMUNITY-BASED

ORGANIZATIONS IN NORTHERN CALIFORNIA

IN OPPOSITION TO THE NOMINATION

OF

VAUGHN R. WALKER

FOR

U.S. DISTRICT COURT-NORTHERN CALIFORNIA

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Good afternoon. My name is T.J. Anthony, and I welcome this opportunity to appear before you. Today marks the first meaningful occasion citizens have had to participate in the judicial selection and review process for the nomination of Vaughn R. Walker. We are especially grateful to you, Mr. Chairman, for making sure that citizens are included in offering comments on a lifetime judicial appointment that will have a profound affect on the lives of all Northern Californians.

Citizens care deeply about the quality and respectability of our judiciary. We take seriously our duty to contribute to a full evaluation of this nominee and the affects his appointment will have on the courts and our communities.

The role of citizens in the selection of judges is an important one, and was respected by former Supreme Court Justice Felix Frankfurter, who said:

> "It is because [of] the power it wields, that appointments to the court is a matter of general public concern and not merely a question for the profession."

For seven years, I was honored to work with your colleague, Senator Riegle. My job included connecting rural citizens with their government and advocating for small towns. Since that time, I have served as the executive director of the Michigan Organization for Human Rights, and spent a year working out of former Republican State Representative Jim Dressel's office on civil rights legislation. But today, my roles are reversed.

Rather than listening to the pleas of citizens, I am a citizen with a plea. Indeed, I am here to represent a great many people from my home in San Francisco -- citizens with a plea.

We ask this committee to set aside the Walker nomination so that a truly exceptional individual may be selected to give our court the respect and confidence of citizens. We are united in our opposition to the nomination of Mr. Walker. We come as individuals and through community groups, including the NAACP-San Francisco Chapter, Black Leadership Forum, Rural Citizens' Network, Bay Area Women's Alliance, United Farm Workers, Retail Clerks' Union, the Lesbian & Gay Leadership Conference, Black Women Organized for Political Action (BWOPA)/East Bay, Women's Issues Forum-San Francisco Women's Building, the weekly newspaper *Coming Up!**, Hotel & Restaurant Workers Local 2, Jewish Women of the East Bay, and FMA Task Force on the Judiciary.*

In addition, the City and County of San Francisco, through its Board of Supervisors, unanimously endorsed a resolution calling on the Senate to reject the Walker nomination. We are strongly opposed to the confirmation of Mr. Walker for three critical reasons:

> *First**, Mr. Walker fails to meet the minimal ethical standards of a judge;*
>
> *Second**, Mr. Walker has limited legal and life experiences; and*
>
> *Third**, Mr. Walker's appointment would perpetuate and exacerbate the harmful racial and gender imbalance now present on the court.*

LACK ETHICS STANDARDS

We are alarmed by Mr. Walker's apparent lack of ethical principles in which to guide him in his practice of law and treatment of people. We believe Mr. Walker has exhibited a lack of ethical standards in at least five significant instances:

> *First, Mr. Walker failed to meet his ethical obligation to fully disclose information sought by this Committee;*
>
> *Second, Mr. Walker failed to meet his ethical duty to provide pro bono services to the disadvantaged;*
>
> *Third, Mr. Walker mistreated a dying man and sought to gain through a scheme of overreaching;*
>
> *Fourth, Mr. Walker failed to meet his ethical responsibility to relinquish membership in organizations that "invidiously discriminate against women and minorities; and*
>
> *Fifth, Mr. Walker lacks the qualities of sound judicial temperament as exhibited by his bias against women;*

Because Attorneys Dunlap and Ginzberg have developed discussion on some of these glaring examples of unethical conduct by Mr. Walker, I will limit my comments to a brief overview of each point and will focus primarily on topics I do not expect Ms. Dunlap or Ms. Ginzberg to address.

Failure to Disclose

Mr. Walker was asked by this Committee if he "ever held a position or played a role in a political campaign." He replied in a sworn statement by saying that his campaign roles had been limited to being "listed as a supporter on dinner committees and *committees for various events." The evidence now shows that Mr. Walker's roles were more substantial than simply lending his name for use on invitations. What Mr. Walker failed to report was that he worked as a fundraiser for several political figures, including Senator Pete Wilson and Governor George Deukmejian. Mr. Walker failed to report that he and his colleagues at Pillsbury, Madison & Sutro contributed at least $11,000 to Senator Wilson's 1982 campaign alone [Federal Election Commission Report]. Mr. Walker failed to report his role as the treasurer of the local Republican Finance Committee, which a San Francisco newspaper called "a central cog that pumps money into Republican campaigns." [San Francisco Bay Guardian, January 20, 1988.] Mr. Walker also failed to report that he raised money for Senator Wilson's gubernatorial campaign in 1978.*

There is a substantial difference between merely having his name "listed" and Mr. Walker's outright solicitation of political contributions for candidates who ultimately had great influence over his judicial selection. Words are a lawyers trade-in-stock. Mr. Walker is a lawyer. He is well aware of the import of minimizing or omitting certain words relating to his political activities.

By his failure to fully disclose his campaign roles, Mr. Walker's sworn answer certainly suggests that he intentionally mischaracterized the extent of his contributions. Complete and truthful knowledge of Mr. Walker's political activities help explain how he positioned himself to receive a lifetime judicial appointment.

We would ask the Committee to inquire of Mr. Walker, while under oath, why he concealed from the Senate the extent of his roies in both of Senator Wilson's campaigns.

Pro Bono Service

Mr. Walker reports serving just one disadvantaged client pro bono in 16 years of legal practice. We have information to suggest that Mr. Walker may have provided pro bono services to persons or groups with substantial means who, therefore, would not be considered disadvantaged. For example, a former associate of Mr. Walker's stated in a letter to the Committee that he thought the nominee handled the case of Legislature v. Deukmejian (34 Cal. 3d 658, 194 Cal. Rptr. 781, 669 P. 2d 17.) pro bono. This was the Republican Party's case to overturn the California reapportionment plan.

Needless to say, we have no objection to Mr. Walker's representation of this matter, or his clients.. If, however, it is true that Mr. Walker handled this case pro bono, it would certainly tell this Committee where Mr. Walker's priorities are. He is not able to serve the disadvantage pro bono, just powerful organizations that could significantly influence his career goals.

We ask the Committee to raise with Mr. Walker specific questions about any pro bono services he may have provided to organizations, corporations, businesses, or people who would not otherwise be considered disadvantaged.

Olympics Case

Since the Olympics case was the prime focus of Attorney Dunlap's testimony, I will only briefly comment at this point. It *is true that Mr. Walker's conduct in this case is a source of enormous pain and anger by so many people of Northern California. We are particularly disturbed by indications of overreaching by Mr. Walker for his own gain. The nominee demanded extraordinary fees for himself for services that do not appear to have been performed. Indeed, the Ninth Circuit Court of Appeals said that on remand the trial "court should examine both the reasonableness and necessity for the rather impressive amount of time accumulated on this case." Mr. Walker then used an oppressive lien to extract this sum from the small non-profit defendant and its founder, Dr. Tom Waddell. Mr. Walker placed the lien on the personal home of Dr. Waddell, as Waddell was dying from AIDS. Mr. Walker only signed a release to lift the lien after Dr. Waddell died, a year later. Dr. Waddell spent his last few months of life not only fighting his illness, but the injustice of Mr. Walker.*

Olympic Club Membership

The American Bar Association's position on membership in any organization or club that discriminates on the basis of sex, race, or religion has been made clear -- it is wrong. Likewise, Mr. Walker has refused to resign from the discriminatory Olympic Club unless the Senate demands he do so as a condition of appointment. If Mr. Walker fails to understand on his own why there is an ethical imperative for men and women of justice to refrain from participation in unjust endeavors, how can he competently and with compassion dispense justice fairly?

Del Martin, a founder of the modern women's rights movement and author of the best-seller, "Battered Wives," asks the Committee: "Why is a man who is insensitive to women, who refuses to drop his membership in the all-male Olympic Club, which his own profession has declared unethical, even being considered in the first place?"

Bias Against Women

Another indication of Mr. Walker's bias against women was reported in a letter to this committee by a former associate of Mr. Walker. Specifically:

- *Mr. Walker frequently belittled a receptionist, whom he referred to as "it."*
- *Mr. Walker took glee in putting down the former Chief Justice of the California Supreme Court, Rose Bird, before an audience of 100 male lawyers. Mr. Walker related how much pleasure he got in rudely treating Chief Justice Bird during a court hearing.*

And so, our first major objection with Mr. Walker is his lack of ethical standards or principles.

LIMITED LEGAL & LIFE EXPERIENCES

Our second major objection to Mr. Walker is his limited legal and life experiences.

Limited Courtroom Experience

Most lawyers and judges agree, the best trial judges are those with extensive litigation practice in the courtroom. Yet, Mr. Walker argued cases before juries only twice in his 16-year legal career. He litigated cases before judges on just six other occasions.

Limited Law Practice

Mr. Walker has no experience in civil rights or criminal law. As a trail judge, Mr. Walker will be expected to adjudicate these kinds of cases. Indeed, the Justice Department reported that in 1987 alone, the 18-member Northern California bench handled 500 civil rights and 1,000 criminal cases. Because of the heavy concentration of judges with backgrounds in corporate law, Mr. Walker contributes nothing additional to our district court.

Narrow Advocacy Experience

Mr. Walker has restricted his legal experience to advocating only for powerful interest. If it is true people are the sum total of their life experiences -- and those experiences shape attitudes and perceptions -- then many Californians have reason to worry about Mr. Walker. He has only argued for the rights of employers over workers; landlords over tenants; agribusinesses over farm laborers; major institutions over small non-profits. The objection is NOT to any specific clients Mr. Walker may have represented, but to the narrow interests that form his entire legal experiences and perceptions. At no point in his law career has Mr. Walker sought to broaden his perception of the law or community through legal services to and interaction with minorities and disadvantaged.

If Mr. Walker's sole source of income and contact is with powerful groups, there is little assurance that he can fairly decide cases where the interests of the powerful collide with those of the powerless. Former Supreme Court Justice Felix

Frankfurter once observed "the ultimate determinant" in the quality of individuals to serve on the bench, among other things, is "their whole outlook on life, their experiences, and their ability to transcend their experiences. "

Mr. Walker's look on life is narrow and thus necessarily gives him a limited perception of the law and people. The reality is, Mr. Walker has spent his days for 16 years advocating only for powerful interests. He has spent much leisure time in a club that intentionally discriminates against substantial numbers of our citizens. Mr. Walker's only contact with the disadvantaged seems to be the homeless he must step past to gain access to his office. Mr. Walker has intentionally insulated himself from the reality of our community. Just like the homeless mother who sits with her young child outside Mr. Walker's office building every day is shut out of his law practice, so are women shut out of his private club. And now Mr. Walker says by his words and presence today that he feels capable of dispensing justice fairly.

Mr. Walker by his own choice has limited his view of the world by restricting his legal and life experiences. It is doubtful Mr. Walker is capable of transcending his narrow concept of law and attitudes towards people when he has no other frames of reference to guide him.

COURT IMBALANCE

Finally, senators, our third and final major objection to the Walker nomination. Mr. Walker's placement on the bench will *perpetuate and exacerbate the harmful racial and gender imbalance that has always existed on the bench.*

It is clear to us that Mr. Walker has been selected to repay his years of political service. He obviously is not an exceptional choice; not even a good choice. He is NOT the best and brightest -- with exceptional skills, experiences, a history of community service -- best choice to be found among California's 110,000 lawyers. In fact, Mr. Walker's nomination is utterly shameful and a smack in face of every qualified women or minority person who was denied an opportunity to compete for this vacancy.

There are 18 judges serving Northern California. Of these, there is just one women, one Black, and one Hispanic. There are no Asian judges. Minorities make up more than 40 percent of the judicial district's population, but hold only 3.6 percent of the court seats. Women are 52 percent of the population, but represent 1.8 percent of the appointments. Of the four sitting judges nominated by President Reagan -- at Senator Wilson's behest -- all have been white males. Mr. Walker, a white male, is the Administration's fifth appointment to our district bench.

The bias against women and minority appointments is widespread throughout the federal judiciary. Of the 343 judicial appointments made by President Reagan -- that are known to us -- there are just 27 women, five Blacks, 13 Hispanics, and two Asians. None are minority women. Mr. Walker's appointment would maintain this harmful imbalance, and is therefore a legitimate issue of citizen concern. Particularly when intentional *discrimination is employed to perpetuate that imbalance.*

The panel that interviewed and makes recommendations on judicial appointments in California for Senator Wilson is composed of only white males. The committee chair, San Diego lawyer John Davies, tells us that no women or minorities were considered for the open judicial seat. In view of Mr. Walker's serious deficiencies, his appointment would produce a cloud of suspicion and mistrust over the judiciary for many years to come. Moreover, Mr. Walker's appointment would unwisely and dangerously inject excessive politics into the judicial system. When it comes to our courts, the only payoff should be justice, not judgeships.

CONCLUSION

Mr. Walker lacks personal standards of ethics, he has limited legal and life experiences, and his appointment will further exacerbate the imbalance which exists on the Northern California District Court.

At the 1970 confirmation hearings of Supreme Court nominee Harrold Carswell supporter and U.S. Senator Roman Hruska stated, "There are a lot of mediocre judges and people and lawyers and they're entitled to a little representation, aren't they." Senator Hruska's query was answered when a bipartisan coalition of senators defeated the nomination by a vote of 51-45.

Just as the Senate rejected mediocrity at the Supreme Court, this Committee must do no less at the federal district court level. ALL judgeships carry the responsibility of safeguarding the public trust -- of maintaining the public's *confidence that all litigants who come before the court -- beginning at the trial court level -- can receive the fair hearing which they are entitled to expected under our constitution. The people comprising the groups I speak for ask that this public trust not be eroded by confirmation of any person to any judgeship merely because that person is crony or purely political appointee. The people deserve better than to be subjected to the lopsided "justice" that prevails when appointment to the judicial bench is the result of political credentials, rather than being made on the basis of life experience and legal acumen. Political involvement is admirable, but it must be the primary qualification for judgeships. The stakes are too high to indulge in such a reward system.*

As former Supreme Court Justice Felix Frankfurter put it, "In theory, judges wield the people's power. Through the effective exertion of public opinion, the people should determine to whom that power it entrusted."

Senators, I have come here today to urge on behalf of the people, that you reject mediocrity, that you reject political cronyism as a legitimate basis for bestowing the mantle of lifetime judicial power, and that you reject Vaughn R. Walker as a judge on the federal bench for the Northern District of California.

Thank you, Mr. Chairman and Senators. You have been generous with your time and most kind to patiently listen to the concerns of people who live so far from your own states. I would be happy to answer your questions.

Senator LEAHY. Thank you.

Let us start with you, Ms. Dunlap. You do not question Mr. Walker's right to represent the Olympic Committee, do you?

Ms. DUNLAP. Not for a moment. When it comes to representing unpopular clients, I would point out to the committee that I have had my share. Some would say I have had more than my share. I would not wish to be judged by the popularity of my clients.

Senator LEAHY. And the court did rule with him.

Ms. DUNLAP. Most assuredly. Although I must say, I would not hope to judge my qualifications by having a five-four go against me in the Supreme Court any more than I would want to decide Mr. Walker's by a vote against him.

Senator LEAHY. The Olympic Committee did have a right to sue to protect their trademark.

Ms. DUNLAP. No question about it. No doubt about it. And they have a right to competent, zealous, aggressive legal counsel. Those are not what is at issue.

Senator LEAHY. That was going to be my next question. Did the other side have a right to counsel and a right to defend in this suit? Is that correct?

Ms. DUNLAP. Absolutely correct, Senator Leahy.

Senator LEAHY. Now as early as—let us see if we can go through some of these things in the hearing today. As early as March of 1987, you had been told by Mr. Kester, one of the Washington counsel for the Olympic Committee, that you should move before the trial court judge for an order releasing the lien on Dr. Waddell's house. My understanding is, as I go back through the notes, that Mr. Kester said he thought his clients would not oppose such a motion.

I realize it is an inconvenient way of, and a kind of a long way of solving Dr. Waddell's problem, but why not do that?

Ms. DUNLAP. Why not a motion?

Senator LEAHY. Why not just simply—let me just finish—take a deep breath, go back to the judge and say, how about releasing the lien?

Ms. DUNLAP. I have sought to answer that question in my reply memo to the committee in which I have said, and I will summarize briefly here, that to suggest that we go back and make a motion to remove the lien when it was, even in Mr. Kester's letter, not certain that the plaintiffs would not oppose us was, given Judge Vukasin's disposition about the case, given his entire pattern of rulings, given his attitude towards my clients, given the statements that he made in granting summary judgments and in granting the attorney's fees, given indeed his granting of an attorney fee award in an unprecedented context where the declaration supporting the amount of the award came in by way of reply, given that whole texture of Judge Vukasin's hostility toward my client, I as attorney made a professional judgment that such a motion was a trap-door.

The risk was this. That Judge Vukasin might indeed not only deny our motion removing the lien. I do not mean to say lawfully. I think the law mandated that he should, but he had not, up to that point, followed my sense of the law on any question. But that he might reach out further and entangle further Dr. Waddell's and the non-profit corporation's property in spite of the lack of a judgment being secured.

I think simply maybe——

Senator **Leahy**. What about then going in and seeking a stipulated order?

Ms. **Dunlap**. We sought that. We sought that. When I spoke with—from early 1986 through the time that Ms. Baer finallv secured a document in which Mr. Walker signed off on the lien, I asked, I sought, I put in terms of what my client, a mutual document releasing the lien. Because, you see, I could not do anything unilaterally.

Senator **Leahy**. I am talking about stipulation for submission to the district court. Did you seek, or did you go to Mr. Walker or anybody and say, look, why do we not try to draft an agreed order, the two of us bring it down and ask the judge if he would just sign it. Both of us stipulate to it, release the lien.

Ms. **Dunlap**. No, that is not the direction in which our negotiations went, and I will tell you why not. Because I called him—I called Mr. Walker, and it is distinct in my memory that I called him within a week or two of the ninth circuit's vacating of the attorney's fee award, and at that time, Senator Leahy, my best recollection is that Mr. Walker's reaction to my request for some action on his part to remove the lien was, well, I am not so sure we have to do that at this stage.

Now I take it from his testimony today—and I thought it was mighty important in terms of figuring out the motivation of this attorney in leaving the lien on the property—that it was his intention in behalf of his clients, to leave the lien on Dr. Waddell's property to coerce or force or push the non-profit corporation to raise funds to pay the judgment. You need to understand here that the non-profit corporation had—to say that it had $10,000 in the bank would be overstating the matter. It was unable to pay the attorney's fee award.

But remember, as of the time that Mr. Walker is doing all this, there was no attorney's fee award. I think it is important to keep in mind the frame around this whole picture. That as of January of 1986, there was no judgment being secured.

I agree that the law ought to be that the liens were automatically released. But the law was not that. So it befell me to go as aggressively as I could in behalf of my client and get Mr. Walker to take action to have them removed. Those liens were placed there by his client.

Keep in mind also in terms of Senator Heflin's question, that the liens are filed in State bureaucratic channels and that this was Federal litigation. So we did not have the option of turning around and going to State court and getting a State release. We looked into that matter. We looked into—I think it is fair to say between Ms. Baer and myself——

Senator **Leahy**. But a Federal court release would have released it, even though it——

Ms. **Dunlap**. My understanding is——

Senator **Leahy**. Please let me just get the whole question out, and take all the time you want to answer.

Ms. **Dunlap**. By all means. Excuse me.

Senator LEAHY. In the situation you had there, even though the lien was filed in the State bureaucracy, wherever you file liens in California, if there was an order releasing it by the district court, it would be released. Is that correct?

Aside from whether you could get the order or not, is that correct just as a matter of law?

Ms. DUNLAP. Provided the county recorder's office would file such an order. Let me explain.

Senator LEAHY. The lien is in the county recorder's office to satisfy a potential judgment in a Federal case.

Ms. DUNLAP. To satisfy an actual judgment. That is to say it secured——

Senator LEAHY. To satisfy a judgment and to secure a judgment in a Federal court, is that correct?

Ms. DUNLAP. That is correct.

Senator LEAHY. Then if the parties entered into a stipulation order issued by that same Federal court, why would that not release it?

Ms. DUNLAP. But that is what we did seek. We may be getting caught in legalese here, Senator.

Senator LEAHY. What you are saying is that even if the parties and the court all entered in to an agreed order to release the lien, the recorder could say no?

Ms. DUNLAP. No. What I am saying—when we would bring an action for writ of mandate to compel the filing of the order, but here is the problem. If Judge Vukasin had, instead of simply issuing an order, issued something more complicated such as an opinion, then we would have run into the same problem which Ms. Baer ran into, which she outlines in her letter to Mr. Walker in July of 1987, outlining her effort to file the ninth's circuit order vacating the attorney's fee award.

What I am saying is this, that I believe relevant to the matter at hand, which is an inquiry into Mr. Walker's conduct and the ethics and compassion implicated by it, that nothing that the plaintiff could do unilaterally, under the circumstances of this case—I am sorry, I misspoke.

Nothing that the defendant could do unilaterally in this case would have removed the lien. It required action on the part of either Mr. Walker or Judge Vukasin, or both, to have the lien removed. We sought that action from the earliest point.

Most crucially, this committee has been told that we did not. This committee has been told that I took no action at both pages three and four of Mr. Walker's letter and that is outrageously false.

Senator LEAHY. I understand. You, as will Mr. Walker and everybody else, will have a full copy of the transcript and the record will be kept open long enough for any one of you to respond to anything that is in the transcript.

Let me ask you about the letter from the president of the U.S. Olympic Committee, Peter Ueberroth. He basically upheld your position on the fee issue. I think, just stepping outside this for a second, it would be rather persuasive for any lawyer to see the president of his clients put in writing his agreement with the position taken by the client's adversary.

Mr. Walker has said that he never saw this letter until July, just a few days before Dr. Waddell's death, as I recall his testimony. If the record shows it differently, I will be corrected. The letter was written in March. I will put this letter in the record.

[Letter follows:]

bcc: Dick Schaap

ROBERT H HELMICK
PRESIDENT

RECEIVED BY
COMMISSIONER'S OFFICE
MAR 30 1987
By__________

ROBERT H H
PRESIDENT
DR EVIE G D
VICE PRESID
STEPHEN B
VICE PRESID
WILLIAM B T
VICE PRESID
ANDRAS TOI
SECRETARY
HOWARD C
TREASURE
WILLIAM E
IMMEDIATE
PAST PRESI
GEORGE D
SECRETAR

March 24, 1987

Peter Ueberroth
Commissioner
Major League Baseball
350 Park Avenue
New York, New York 10022

Dear Peter:

Thank you for your recent note concerning Tom Waddell. I'm glad you brought this to my attention. I agree with you.

We are taking no action against Dr. Waddell or any of his property. Originally a lien had been filed on his home; however, it was released, and I have directed our attorneys not to reinstitute action even if authorized by the Supreme Court decision.

As you may know, the case is being argued in the United States Supreme Court today. At issue is whether we have the right to use the word "Olympic" with respect to an athletic competition. My personal view is that although we may need that clarification, we do not need to harass Dr. Waddell.

I hope all is going well for you. One of my great pleasures as President of the United States Olympic Committee has been working with a number of your LAOOC alumni who are assisting me inside the USOC, including Chuck Cale, Jay Flood, and David Simon. They are terrific.

With best personal regards,

Bob Helmick
President

RHH:bs

UNITED STATES OLYMPIC COMMITTEE
2190 FINANCIAL CENTER
DES MOINES, IOWA 50309
(515) 244-1116

Senator **Leahy**. When did you first see that letter?

Ms. **Dunlap**. I believe I was first provided with a copy of this letter by Ms. Baer, as a part of her files, sometime after Tom Waddell died.

However, I was made aware of the fact that the U.S. Olympic Committee was representing that the liens were released by a telephone call from my client, Dr. Waddell, who was quite ill at the time and who called me to say that he understood that someone high up in the USOC had called Tom Brokaw or someone representing Tom Brokaw at NBC News, to try to get him not to air a report which was about to air that evening or the next day on the evening news, a report about Tom's life, about this person, as Ephraim Margolin said, this magnificent person.

It was, among other things, a report that told the story of the U.S. Olympic Committee's lien on Tom's land and stated that the lien was still in effect.

Now Tom told me that the NBC people were talked out of airing that report by a representative of USOC who informed them that he was sure that the liens had been removed and that he had consulted with Pillsbury, Madison & Sutro to get that advice.

What I am saying is this, Senator Leahy, when you read this language, however it was released, this is not something that the client is fantasizing.

Senator **Leahy**. To go to my basic question earlier, you did not see the letter until after Dr. Waddell's death?

Ms. **Dunlap**. This particular letter I did not see. I did learn of representations of this nature that were being made by USOC, yes.

Senator **Leahy**. When you heard of the representations that this was happening, did you use that to go to Mr. Walker, or any of the other lawyers on the Olympic Committee, to try to budge them on the issue of the lien?

Ms. **Dunlap**. By the time that I became aware of this documentation of the USOC's dual representation of the status of the lien, they left it on the land but they told the world it was gone, they wanted to make Tom Waddell force his non-profit to make money, that they told 20/20 and NBC it was gone, by the time I became aware of it, Senator Leahy, the lien had been released by the signing, by Mr. Walker, of the letter given to Ms. Baer, July 17 or so of 1987.

Senator **Leahy**. That was after Dr. Waddell had died?

Ms. **Dunlap**. That was after he had died. The letter was signed, if I am not mistaken, 6 days after.

Senator **Leahy**. Prior to the time he died, how long before he died did you hear, directly or indirectly, that somebody high up in the Olympic Committee was saying get rid of this lien?

Ms. **Dunlap**. I heard it first in conjunction with, if not at then closely after, press conferences that occurred at the Supreme Court building on March 24, 1987, which was the day the argument was made. I spoke with Ms. Baer about the matter.

The liens were a matter that she had taken charge of and taken over by March of 1987, but with my backup. And let me say that something more serious occurred after that, in terms of representations that the USOC was making, that requires me to correct something, an impression, earlier registered of record.

That is that Mr. Walker somehow dropped out of sight as the attorney of record and that the USOC went on to drop its attorney's fee motion. The record fact, the undisputed record fact, is that Mr. Walker got back into the case after the Supreme Court opinion and he and his firm filed a motion for $280,000 in attorney's fees and, in that motion, made no reference to all this documentation by their client, that their client was not going to proceed against my client.

So the duality, if you will, the two worlds were beginning to collide by the fall of 1987.

Senator **Leahy**. Then you feel that Mr. Walker went beyond being just a tough advocate, crossed over a line?

Ms. **Dunlap**. Yes, sir. I absolutely do feel that. I think I have stated my reasons.

Senator **Leahy**. Apparently you certainly faced tough adversaries before?

Ms. **Dunlap**. I most assuredly have.

Senator **Leahy**. What might he have done not to have crossed over that line or, if you prefer it going the other way, what did he do specifically that crossed him over the line? I mean, he fought his case hard, he won it at the district level. He won it at the courts of appeal level, and he won it in the Supreme Court.

Might his client say by God, we set out to win and we asked the lawyer to get there and win for us, and the courts ruled with him all the way up through here. They did not have any question about his advocacy, conduct or anything else. He won. If people do not like it, it is some sour grapes.

You argue, however, that you have no problem in dealing with a tough advocate. You do not mind being a tough advocate yourself, but somewhere there is a point where you go beyond what you are entitled to do as an advocate. What was the point?

Ms. **Dunlap**. Well, it is rather a pattern instead of a point. It was not just his misrepresentations about the liens. It was not just his refusal to take action when he himself was simultaneously saying that the liens were of no effect. It was not solely his misrepresentations of fact in the record.

Let me point out to the committee that Mr. Walker repeatedly, starting on the date that we argued the motion for a temporary restraining order in August of 1982, repeatedly represented both in briefs and orally that my clients had used Olympic symbols. This is important because what he said the first time was they have used the three rings and that was a trademark.

Think about that for a minute. Three rings are not trademark. Five are. My clients had used three sort of circles or disks that looked, I think, not much like five rings.

But the point is this. My clients never, at any point, used Olympic symbols. Mr. Walker repeatedly represented that they had. But let me say why it is important in terms of methods.

Senator **Leahy**. But that does become a question of evidence for the court to determine, does it not?

Ms. **Dunlap**. Indeed, it did. But here is what happened. Here is what happened with that misrepresentation.

I pointed out to Judge Conti that Mr. Walker was both misstating the law, which says in 36 U.S. Code section 380(a) (1), (2), (3), and (4) define what is protected property. Three circles are nowhere to be found.

I pointed out to Judge Conti, these were three circles and these were five rings. Here is what crucial about this, Senator Leahy. He was trying to paint Tom Waddell as a malicious deliberate trademark thief, so as to gain an advantage in the litigation that the facts did not warrant.

That goes further, to my mind, than zeal. That goes further, to my mind, than an aggressive, adversarial representation of the client. I have never had occasion, in 17 years of practice, I have certainly had temptation but I have never had occasion to misrepresent the record facts so repeatedly, as Mr. Walker did, as to that fact.

Senator LEAHY. I would assume, then, that you argued to the court that there was a misrepresentation?

Ms. DUNLAP. Absolutely. Of course I did. But you asked me—we are not relitigating the Gay Olympics case, I promise you. We are talking about my judgment about Vaughn Walker's ethics and his compassion and what those were based upon. I am saying to you, Senator, that there is a clear cut point after which zeal is no longer the explanatory variable and something closer to menace, or a desire to win at all costs, or really an insecurity that causes one to overstate one's case takes over and turns into a lack of ethics.

Repeatedly, and this is why I said there was no point there was rather a pattern in the litigation where Mr. Walker did that. He has also done that in front of this committee. He said to this committee the liens were ineffective and yet he has given this committee no reason, if they were ineffective, for his year and a half of refusal to respond to my repeated requests and those of Ms. Baer to remove the liens from land belonging to a man who ultimately was dying and needed to know that they should be removed.

Senator LEAHY. Ms. Ginzberg, you criticize Mr. Walker's failure to resign from the Olympic Club. I am just referring back to my notes to make sure I get everybody's testimony here.

You say now if he were to resign, that you equate that with trading a membership for a judgeship? I am not trying to put words in your mouth, but was that basically what you said?

Ms. GINZBERG. Yes, and what I am very concerned about is he has made it quite clear in his application to this committee that he will only give up his membership in the Olympic Club if, in fact, he is given a judgeship or if told to do so by this committee.

I am not sure I am saying anything different than what you asked him yourself. Let me say that I went back to Judge Kennedy, Judge Anthony Kennedy's testimony before this committee to see what his responses were. Although I was extremely troubled personally at the time that Judge Kennedy's nomination was up, about his existing membership in the committee prior to October of 1987.

In contrast, it seems to me that it is significant that he did drop out. It is significant that he wrote a letter. Mr. Walker indicated here that he has never done anything in writing to urge this committee, although there has been some testimony that he has spoken on behalf of bringing women into it.

So I am extremely concerned, as a citizen in a city where this club is the symbol of male dominance and the symbol of the exclusion of women. This is not a club that nobody has ever heard of before. This is a club that carries quite a bit of weight.

As Judge Kennedy indicated in this testimony, it is a place where people go and conduct business. This is not a charitable institution. This is basically a place where business deals are conducted and which has some of the best athletic facilities in town. The fact that there are only men who are permitted into this is of great concern to all the women who litigate there.

Senator LEAHY. You heard my quotation from Judge Kennedy earlier, where he talked in terms of "we settled this case, let us go celebrate; whoops, all except you, Ms. Ginzberg." I am paraphrasing.

Ms. GINZBERG. That was of real concern to us, and remains of concern. The other thing is——

Senator LEAHY. But you are saying it is more than just a social deprivation. For somebody with a professional career it can be a real detriment not being able to have at least the option of membership?

Ms. GINZBERG. Correct.

Senator LEAHY. I do not mean to put words in your mouth, but is that a fair summary?

Ms. GINZBERG. Yes, that is a fair summary and let me just give you one other example which comes from, again, the city attorney's case. There was a young woman who had some subsidiary access to the club as a result of her father's membership who became an attorney and continued to have some access to the club's golf facilities.

After her father died, she applied for full membership and she, herself, was denied membership on the grounds that they exclude women. This is a woman who had actually made it through the door a few times.

I, who have no father or husband who could get me into the door of the Olympic Club, would not have had such access. But that is a reality. Again, the concern about the club goes deeper than what we know. It has to know with what we do not know, and the sorts of deals that are done. I would say that we all agree that that is part of why the ABA is so concerned about that.

Senator LEAHY. You do not question Mr. Walker's right to represent the Olympic Committee?

Ms. GINZBERG. The Olympic Committee? Absolutely not. I am not here, as I said in my testimony, because of who Mr. Walker has represented. I am concerned about who he has not represented.

Senator LEAHY. You have no question that they have at least a right, and it is up to the courts, to sue to protect what they saw as their trademark?

Ms. GINZBERG. Absolutely. I would like to make just one comment on what I have heard here. The reason this case got some publicity during the time that it was being litigated, just as a citizen of San Francisco, it is the sort of case you read about in the newspaper. It was somewhat surprising to those of us who do civil rights and civil liberties litigation to see a major attorney's fee lien in a civil rights—this is actually a trademark case—on someone's property at that stage of the litigation.

I called around, actually, before coming here to see whether anybody had heard of a similar attorney's fees attachment. Nobody had. I wondered whether I just was not aware of it.

So although this has been touted here as just normal practice, in fact for those of us who practice in this field, this does not appear to be a normal procedure. Nobody that I called had heard of a similar attachment or a lien proceeding taking place on an attorney's fee judgment against an obviously poor client.

Senator LEAHY. One last area. You expressed concern about the fact that Mr. Walker's practice is one that isolates into a very particular stratum of society. Do you feel that that kind of isolation could be changed by involvement in pro bono work, involving the disadvantaged?

Ms. GINZBERG. Certainly.

Senator LEAHY. And do you see a record of that kind of pro bono work in the nominee?

Ms. GINZBERG. In the company?

Senator LEAHY. No, in the nominee?

Ms. GINZBERG. No, I was concerned—again, my knowledge of his pro bono work came from his application to this committee and I was extremely concerned to not see—the way they do it is with billable hours on pro bono cases. And to not see any representation of other than this one family, in terms of representing the disadvantaged, which I say is this floor below which we do not expect any member of the legal profession to fall, I consider that of great concern given the kinds of cases that are consistently litigated in the northern district. Five hundred civil rights cases include the rights of aliens, include the rights of the homeless, include the rights of poor people constantly, include the rights of women in a title VII case.

I am worried about those cases appearing in front of somebody whose background, whose practice, and whose current legal work does not in any way bring him into contact on the side of those people. That was the basis of my testimony and my concern.

Senator LEAHY. Thank you. Mr. Anthony, you do not question Mr. Walker's right to represent the Olympic Committee, do you?

Mr. ANTHONY. Absolutely not, Senator. If I could make just one brief observation on that point, because Mr. Walker and some of the people that support him have basically made the campaign as if somehow we are attacking his clients and particularly whether or not lesbian and gay people in San Francisco are attacking his clients.

I want to assure the committee that gay people, better than anyone, understand the principle that a lawyer ought not be judged on the basis of her or his clients, any more, Senator, than a client ought to be judged on the basis of who she or he is.

In fact, as the Senator will recall, that it was just a few years ago where this Congress enacted a law, the McDonald Amendment, that prohibited lesbian and gay men from having legal services protection from the Legal Services Corporation. If anyone has been a victim of identity, it has been gay people.

So absolutely, we do not on that point.

Senator **Leahy**. Not every member of this Congress voted for that amendment.

Mr. **Anthony**. I did not mean to refer to you, Senator.

Senator **Leahy**. I understand.

Just to go back to what Ms. Ginzberg said, and draw that into something that you said, Mr. Anthony. You quoted Justice Frankfurter in your testimony to the effect that the ultimate determinant of success of the judge includes a judge's ability to transcend his or her experience.

It is not unusual for a judicial nominee to have a career in which the nominee consistently handles a narrow or specialized category of cases. We have fewer and fewer generalists at the bar. Some of these nominees do transcend their experiences and go on to make excellent judges.

But is it your feeling that Mr. Walker will not transcend that?

Mr. **Anthony**. Senator, I do not think that Mr. Walker is, at this time, capable of transcending his very rigid and limited life experiences. I think because of that there is so much fear among so many communities in the district about the kind of judge that Mr. Walker would be.

Perhaps Mr. Walker would make a fine judge in 5 or 10, or maybe 20 years from when he had an opportunity to really relate to and be a part of the community that he serves, to dispense justice to.

Senator, we are talking about 40 percent of the minority people live in this area. We are talking about women who cannot even get through the door of his club. We are talking about a lot of fear about a man who basically used what we believe were oppressive tactics to injure a dying man. That is a source of enormous fear for us.

I want to say one thing, too. Somebody said to us, well, you know sometimes the Senate Judiciary Committee can commit the nominee to recuse themselves. What they were saying was well, the nominee will not handle any lesbian or gay cases.

By the time we got down to this, Senator, we had Mr. Walker not handling any lesbian or gay cases, no cases involving blacks, no cases involving Hispanics, no cases involving Asians, and no cases involving women. By the time we got done with it, the only cases that the people felt comfortable with him handling were those clients that he is handling right now, major corporate firms.

There is that kind of fear. I am talking about a meeting with civil rights activists and people representing those various communities. There is that fear.

Senator **Leahy**. Senator Thurmond, before I go to my next round of questions.

Senator **Thurmond**. Ms. Dunlap, is it correct that you have made statements that Mr. Walker is homophobic and antigay, that he used overzealous tactics in the gay Olympics case? I believe you were the opposing counsel in that case; am I correct?

Ms. **Dunlap**. That is correct.

Senator **Thurmond**. I wonder, however, did the courts find there was discrimination against gays?

Ms. **Dunlap**. Only four members of the U.S. Supreme Court felt that that was an issue. A majority of the U.S. Supreme Court felt that there was an insufficient record made of discrimination. So the correct answer, the legal answer to your question, Senator Thurmond, would be that five-ninths of the Supreme Court agreed that there was no discrimination here.

The other four divided—two, Blackmun and O'Connor believed that the U.S. Olympic Committee was a Government actor and that there ought to be litigation about whether they discriminated. So they felt at least there was a valid claim. And the final two, Marshall and Brennan believed that there was proof of discrimination sufficient to grant summary judgment to the defendants.

Senator THURMOND. A very short question, maybe you can give me a short answer.

Ms. DUNLAP. I will try.

Senator THURMOND. Did the courts hold there was discrimination against gays? Yes or no?

Ms. DUNLAP. A majority of the court did not find discrimination, that is correct.

Senator THURMOND. That is what I wanted.

Ms. DUNLAP. That is right.

Senator THURMOND. Ms. Dunlap, a May 25, 1988 article co-authored by you and Ms. Abby Ginzberg stated that six members of the judiciary committee of the Bar Association of San Francisco found Mr. Walker unqualified.

Ms. DUNLAP. That was the information that was provided to us.

Senator THURMOND. Just a minute, let me get through.

Ms. DUNLAP. I am sorry.

Senator THURMOND [continuing]. To be a U.S. district judge. However, as a result of your article, the president of the bar association and the chair of the bar's judicial committee wrote a letter to the editor which stated, and I quote:

> BASF bylaws provide that a candidate for judicial office shall be placed in the highest category for which he or she receives a majority vote of the committee consisting of at least eight votes. The bylaws also provide that if a candidate is placed in the category of qualified or higher, no vote is taken on the vote unqualified or any other negative category.
>
> The article is therefore incorrect in saying that seven members found Mr. Walker qualified. The report shows that 10 did. It is also incorrect in suggesting that any vote for unqualified was taken.

Is that true?

Ms. DUNLAP. Let me say that that was the information that was provided to us by the bar association, and that Ms. Ginzberg has had conversations with members of the bar association verifying her interpretation of those facts. So I would, with respect, Senator Thurmond, defer to her for a specific factual answer for why we made those statements in that article, if you wish to hear her response.

Senator THURMOND. You and Ms. Ginzberg did make an inaccurate statement in that article.

Ms. DUNLAP. No, that is not correct, Senator Thurmond. It is an accurate statement, and Ms. Ginzberg, who has the facts and met with the people and spoke with the people who gave her that interpretation, can tell you that it is accurate. I cannot, sir.

Senator THURMOND. Well, here is a letter written to the editor of the San Francisco Daily Journal by Edward F. Kallgren, president of the Bar Association of San Francisco and Charles C. Marson, chair, judicial committee, Bar Association of San Francisco. In the last paragraph he says this:

> The article is therefore incorrect in saying that seven members found Mr. Walker qualified. The report shows that 10 did. It is also incorrect in suggesting that any vote for unqualified was taken.

Is that statement true or not?

Ms. DUNLAP. That is his opinion, sir.

Senator THURMOND. Is that statement true or not?

Ms. DUNLAP. It is an opinion, and it happens in our view to be wrong.

Senator THURMOND. You know whether it is true or not.

Ms. DUNLAP. I know that it's false in terms of the information provided to us, Senator. I wish that I would be permitted to defer to Ms. Ginzberg to respond factually to that letter because she is prepared to do so.

Senator THURMOND. I am going to ask this letter be placed in the record.

Ms. DUNLAP. May I ask that my colleague be permitted to respond to the matter?

Senator LEAHY. The letter will be placed in the record.

[The correspondence with the Bar Association of San Francisco follows:]

BASF
BAR ASSOCIATION OF SAN FRANCISCO

April 18, 1988

Edward E. Kallgren
President
Judith E. Ciani
President-Elect
Peter G. Keane
Treasurer
Michael G.W. Lee
Secretary
Drucilla Stender Ramey
Executive Director &
General Counsel
Joan Evjenth
Deputy Executive Director
Barbara Fanning
Continuing Legal Education
Committees and Sections
Margaret Sparks
Publications and
Public Affairs
Tanya Neiman
Director, Volunteer
Legal Services Program
Associate General Counsel
Carol Woods
Director, Lawyer
Referral Service

BOARD OF DIRECTORS
Ralph Santiago Abascal
Barry A. Abbott
Alice M. Beasley
Cedric C. Chao
Robert V. R. Dalenberg
Phyllis Kay Dryden
Patricia S. Green
Joan Graff
Sarah Hofstadter
Robin E. Levine
Otis McGee, Jr.
Armando Menocal
Beth H. Parker
Jeffrey S. Ross
Richard J. Stratton

EX-OFFICIO MEMBERS
BARRISTERS CLUB
(January-July 1988)
Jonathan V. Holtzman
President

PERSONAL AND CONFIDENTIAL

Steven J. Metalitz
Chief Nominations Counsel
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Re: Nomination of Vaughn R. Walker
United States District Court
Northern District of California

Dear Mr. Metalitz:

I am the Chair of the Judiciary Committee of the Bar Association of San Francisco. That committee evaluates nominees for judicial office and reports to the appointing, recommending or approving authority. Its powers and duties are set forth in Article IV of the Association's By-Laws, a copy of which is enclosed.

Section 1(c) of Article IV of those By-Laws gives the Judiciary Committee discretion to conduct an evaluation of a candidate in the absence of a request by the appointing authority, and the committee has done so in the case of Mr. Walker. The evaluation was conducted in accordance with the procedures set forth in Section 7 of Article IV.

This is to advise the Senate's Committee on the Judiciary that Mr. Walker received a rating of "qualified" for appointment to the United States District Court for the Northern District of California from the Judiciary Committee of the Bar Association of San Francisco. For your information, from the 16 members present, Mr. Walker received 10 votes for qualified and three votes (of the 10) for well qualified.

San Francisco Bar Center at the Monadnock
685 Market Street, Suite 700, San Francisco, CA 94105 (415) 764-1600 Lawyer Referral (415) 764-1616

Steven J. Metalitz
April 18, 1988
Page Two

The ratings "qualified" and "well qualified" are described in detail in Section 5(d)(1) and (2) of Article IV of the By-Laws. A candidate is rated at the highest qualification for which s/he receives a majority of the votes cast and at least eight votes.

We hope this information is of use to the Committee in its deliberations.

Sincerely,

Charles C. Marson
Chair, Judiciary Committee

CCM:lmf

cc: Members of the Judiciary Committee
of the Bar Association of San Francisco

BY-LAWS

of

The Bar Association of San Francisco
A Non-Profit Corporation
(Revised as of January, 1987)

ARTICLE I

Membership

The members of this corporation (hereinafter referred to as the "Association"), their respective classifications, qualifications, privileges, entrance fees and dues shall be as follows:

Section 1. *Active Members.*

Any member of the State Bar of California, who resides or maintains a law office in San Francisco, is eligible to be an active member of this Association. Each active member has the right to one vote, and is eligible to be an officer or director of the Association. The annual dues of each active member shall be determined by the Board of Directors. However, the dues of any active member employed full-time by the Government of the United States, the State of California, or the City and County of San Francisco, or by any agency, department or political subdivision of the Government of the United States, the State of California or the City and County of San Francisco, or by any non-profit corporation or association engaged in charitable, benevolent, educational, or public service endeavors in the City and County of San Francisco shall be one half the amount otherwise due. For the following purposes:

(1) The date of admission to the practice of law before any court in the United States is controlling regardless of continuity of practice except that any period of necessary absence from law practice by reason of service in the Armed Forces of the United States or under such other circumstances as the Board of Directors may deem proper shall be excluded; and

(2) The calendar year of the date of admission to practice shall count as a full year regardless of the month of admission, except for those lawyers admitted after October 1, 1976. Those lawyers admitted after October 1, 1976 and October 1 of any calendar year thereafter shall be charged first year dues for the following year.

Section 2. *Associate Members.*

Any attorney who has retired from the practice of law or who is not eligible to be an active member is eligible to be an associate member, if such attorney is permitted to practice before the Supreme Court of the United States, or before the courts of the United States located in the State of California, or before the court of last resort of any state, territory or possession of the United States. The dues of associate members shall be determined by the Board of Directors. The term practice of the law herein shall include occupying a position in the employ of or rendering any legal service for an active member of the State Bar of California or occupying a position requiring the giving of legal advice or counsel of examining the law or passing upon the legal effect of any act, document or law. Associate members shall enjoy all privileges of membership except those restricted to active members but shall be eligible to enroll in association health insurance programs only upon meeting the underwriting requirements of the carrier. Only active members shall be eligible for open enrollment.

Section 3. *Honorary Members.*

Any person who has rendered distinguished service to the legal profession or to the State of California or to the United States may be elected an honorary member of this Association by the unanimous vote of its directors present at a meeting or by written consent of all directors without a meeting. Each judge or justice of the United States District Court, Northern District of California, the United States Court of Appeals for the Ninth Circuit, the Supreme Court of the United States, the California Supreme Court, the Court of Appeal, First Appellate District, the Superior Court and the Municipal Court for the City and County of San Francisco and each judge or justice, wherever located, who immediately before appointment or election was a member in good standing and the dean of each accredited law school in the City and County of San Francisco while in office shall, upon application to the secretary, be registered as and be an honorary member. Deans of accredited law schools who were honorary members as of September 1, 1970 shall retain such honorary membership while in office. Honorary members shall enjoy all privileges of membership except those restricted to active members but shall be eligible to enroll in association health insurance programs only upon meeting the underwriting requirements of the carrier. Only active members shall be eligible for open enrollment.

Section 4. *Student and Legal Assistant Members.*

A person who is regularly enrolled in a law school in the State of California as a candidate for the first professional law degree and is in the last year of study necessary to qualify for that degree or a graduate of any law school who has not been admitted to practice in any State or Federal District but who has applied for and has taken the California Bar Examination at the first opportunity is eligible to be a student member of this Association. The dues for a student member shall be $15.00 annually.

A legal assistant is a person, qualified through education, training, or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task. Dues for legal assistants shall be $30 annually for those who are members of a local, state or national association of legal assistants and shall be $35 for those who are not members of such an organization.

Student and legal assistant members shall not be eligible to vote and shall not be eligible for the various insurance plans offered members but shall otherwise enjoy all privileges of membership except those restricted to active members. Student and legal assistant members may join any committee or section but may not be an officer of a section or member of the executive committee of a section or vote on the election of officers or members of the executive committee or section.

Section 5. *Changes in Classifications, Qualifications, Privileges and Dues.*

(a) Provision for, and changes in, dues may be made from time to time by the affirmative vote or written consent of two thirds (2/3) of the entire membership of the board of directors.

(b) Other changes in the classifications, qualifications and privileges of members may be proposed from time to time by the board of directors. Such proposal shall be submitted to a vote of the active members and shall become effective if approved by a majority of the active members voting upon such proposal.

Section 6. *Exemption from and Remission of Dues.*

Any member in the armed forces of the United States shall be exempt from the payment of dues during such member's active service in any branch of such armed forces while such service prevents his practice of law in California. The board of directors may remit or adjust, for such period as it may determine, the payment of dues by any member who is absent from the state for a prolonged time or who sustains a protracted illness or whose circumstances appear to the board to justify a remission or adjustment.

Section 7. *Loss of Membership.*

Failure to pay dues to the Association on or before April 15 in the year due shall result automatically in loss of membership in the Association.

Section 8. *Resignation.*

Any member may resign by giving written notice to the secretary. Such resignation shall be effective upon receipt by the secretary and shall constitute a relinquishment of all the resigning member's rights and privileges, but shall not affect the resigning member's accrued financial obligations to the Association.

Section 9. *Membership Applications and Agreements.*

Applicants for membership in any classification may be required to sign such form of application and membership agreements and provide such information as the board of directors may require, consistent with these By-Laws.

ARTICLE II

Officers and Board of Directors

Section 1. *Officers and Term of Office.*

The officers of the Association shall be chosen from the active members and shall be a president, a president-elect, a treasurer and a secretary, each of whom shall serve for a term of one (1) year.

Section 2. *Board of Directors.*

Only active members may be members of the board of directors of the Association. There shall be fifteen elected directors of the board. Seven of the elected directors of the board shall be elected each even-numbered year for terms of two years each, to begin the following January. Eight of the elected directors of the board shall be elected each odd-numbered year for terms of two years each, to begin the following January. The president, the president-elect, th[illegible]etary and the treasurer of the Association, and the [illegible]nt and vice-president, the secretary and the treasurer of the Barristers' Club during their incumbency shall be ex-officio members of the board. Each regular and ex-officio member of the board shall have one vote.

Section 3. *Election of Officers and Directors.*

The president-elect shall automatically succeed to the office of president for the following year upon expiration of the term of the president. In addition, in case of the death, resignation or removal of the president, the president-elect shall succeed to that office for the remainder of the term as well for the following year.

On or before September 1 of each year, the board of directors shall select a nominating committee of eleven (11) members which shall include the immediate past president of the Association, the immediate past president of the Barristers' Club, two (2) members of the board of directors and seven (7) other members of the Association who shall not be members of the board of directors. The secretary shall post the names of the nominating committee members on the bulletin board at the Association's main office and publish them in The Recorder within two (2) business days thereafter. In selecting members of the nominating committee, the board of directors is to be guided by the principle that the composition of the nominating committee should be, as far as possible, representative of the membership as a whole.

On or before September 20 of each year, the nominating committee shall nominate candidates for president-elect, treasurer, secretary, and non-officer directors, and, if there be no incumbent president-elect, a candidate for the office of president, and post their names on the bulletin board at the Association's main office and publish them in The Recorder within two (2) business days thereafter.

The nominating committee is not required to but may nominate more persons than there are vacancies for any office other than president and-for non-officer directors.

At any time after September 20, up to and including October 10, other nominations for any office, including that of president, if a candidate for that office shall have been nominated by the nominating committee, as hereinabove provided, or director, may be made by a writing signed by any twenty-five (25) members of the Association entitled to vote and filed with the secretary. The names of such additional nominees shall be immediately posted by the secretary on said bulletin board and published in The Recorder within two (2) business days thereafter. No nomination shall be valid unless made as herein provided. On or before October 10, the board of directors shall select an elections committee of five members. No incumbent member of the board of directors or the nominating committee shall serve on the elections committee. Should there be more than one nominee for any office or more nominees for director than the number of directors to be elected, the elections committee shall conduct a written, secret ballot by mail which shall be taken and concluded between October 10 and November 20 for such office and/or for director, as the case may be.

There shall be mailed to each active member a ballot, a plain envelope within which the voting member may place his ballot and an outer envelope to carry the signature of the voting member and to be used for mailing the ballot sealed in the plain envelope. The elections committee may make such additional rules and regulations for conducting such ballot by mail as it may deem appropriate in the interest of insuring a complete, accurate and secret ballot and the promulgation of information about the candidates including their respective positions on relevant issues. The elections committee shall adopt a plan each year for publication of the positions of each candidate for office in such manner as it may deem proper at the expense of the Association as budgeted by the Association for the fiscal year in which the election shall take place. Campaigns for election to such offices shall be conducted without written campaigning except as promulgated by the committee. If three or more members seek election to the same office there shall be a run-off election between the contestants with the two highest vote counts in the original election unless one such contestant receives at least 50% of the total ballots cast for that office. The run-off election shall be conducted by the elections committee and completed by December 15. Following election the successful candidate shall take office at the next annual meeting of the Association.

In the event that at any time any vacancy occurs in any office other than the president, the board may, in its discretion, allow the vacancy to remain unfilled or fill such vacancy in the following manner:

(i) The board shall nominate one or more candidates for the vacant office. If the board nominates an incumbent officer for any position, it may also nominate, on a contingent basis, candidates for the office(s) held by any such incumbent officer(s).

(ii) The names of the candidates shall be published once in The Recorder and posted on the Association's bulletin board for a period of ten days.

(iii) Other candidates may file by a written petition signed by 25 active members. Any such petition must be received by the Association within ten days following the first day of posting of the nominations of the board.

(iv) If more than one candidate or contingent candidate exists for any office, the entire slate shall be published in The Recorder, and the board shall form an elections committee to conduct an election. The elections committee shall, as soon as possible, but in no event later than 20 days from the close of nominations, conduct a written, secret ballot by mail in accordance with the procedures set forth above in this section.

(v) If an incumbent officer nominated for another office is defeated in said election, said incumbent officer shall continue in said officer's present office, and any contingent nomination or election with respect to that office shall be of no force and effect.

(vi) If only one candidate exists for an office, such candidate shall become the officer upon the close of nominations. If an election is held, the candidate with the highest vote shall take office immediately upon completion of the count of the ballots.

In the event that at any time there is a vacancy on the board of directors, the board may in its discretion allow the vacancy to remain unfilled or nominate one or more persons to fill such vacancy. If there be more than one nominee, election by the board shall be by secret ballot. A director so elected shall fill the term of the director he or she replaces.

Effective January 1, 1983, if any officer or director, other than Barrister ex-officio members, is absent from eight board meetings, in a calendar year, he or she shall be deemed to have submitted his or her resignation. The board may decline to accept such resignation only if it is satisfied that the cause for such absences was extraordinary, will not recur in the future, and that the director is committed to regular attendance thereafter.

Section 4. *Policy Concerning Re-election and Re-appointment.*

No officer or director shall be re-elected or re-appointed, immediately following a full term, to a succeeding term in the same position but may be elected to the same position immediately following a service of less than a full term in that position.

Section 5. *Powers and Duties of the President.*

The president shall have such powers and duties as are usually exercised by such an officer. The president shall preside at the meetings of the board of directors. The president shall have power to call special meetings of the Association, or of the board of directors or of any committee and to make appointments and fill vacancies, except appointments or vacancies for which other provision is made in these by-laws. With the advice and consent of the board of directors, the president may name delegates and alternates of this Association to conventions or meetings of the State Bar of California, a representative or representatives in the House of Delegates of the American Bar Association and such other representatives to legal associations or bodies as may be deemed proper by said board. The president may also deal with such other matters as may be placed in his charge at any regular or special meeting of the Association or of the board of directors.

Section 6. *Powers and Duties of the President-Elect.*

In the absence of the president, the president-elect shall have the powers and duties of the president.

Section 7. *Powers and Duties of the Treasurer.*

Subject to the power of delegation as hereinafter provided, the treasurer shall collect and take charge of, and, under the direction of the board of directors, shall disburse, all the funds of the Association. The treasurer shall make a written report at each annual meeting of the Association, showing the amount of money received and the amount disbursed by the treasurer since the last annual meeting and the assets and liabilities of the Association. The treasurer shall keep regular accounts, which shall at all times be open to the inspection of all the members of the board of directors and at all reasonable times open for the information of the active members of the Association. The treasurer shall have the authority with the aproval of the board of directors to invest monies of the Association in accordance with the standards of care and judgment set forth in the applicable laws of the State of California. The treasurer shall cause an audit of the accounts, and a certified statement of the financial condition of the Associationto be made annually by a certified public accountant or by a firm of certified public accountants selected by the treasurer but subject to the approval of the board of directors. The reasonable charge for such audit shall be paid out of the funds of the Association. The treasurer shall not permit collection or disbursement of funds or assets of the Association except by one or more employees of the Association bonded by a bonding company and in an amount to be determined annually by the board of directors. While the treasurer shall have the responsibility for the faithful carrying out of the duties assigned to that office, he/she shall, with the consent of the board of directors, have the right to delegate their execution, under his/her supervision, to employees of the Association.

Section 8. *Powers and Duties of the Secretary.*

Subject to the power of delegation as hereinafter provided, it shall be the duty of the secretary to give notice of all meetings of the Association, all notices required by these-by-laws or by law and not otherwise provided for herein, and such other notices as may be directed by the Association, the president or the board of directors; to notify officers and members of their election, and appointees to offices or committees of their appointment; to keep a complete and accurate permanent record of all proceedings at all meetings of the Association and of the board of directors; to keep a membership book showing the names, business addresses and classification of each member, the manner in which and the date when each became a member and the cause and date of termination, suspension or expulsion of each; to keep a record of all other matters of which a record is required by law or shall be deemed advisable by the Association or the board of directors to be kept by the secretary; under the direction of the board of directors to take charge of and preserve all the records of the Association; to keep at all times an up-to-date inventory of the property of the Association; to preserve and safeguard said property; to assist the treasurer in the collection of dues; and to perform the usual duties of a secretary. All records kept by the secretary shall be open at all times to the inspection of all members of the board of directors, and at all reasonable times shall be open for the information of the active members of the Association. The secretary shall also perform, from time to time, all duties which may be required by the board of directors. While the secretary shall have the responsibility for the faithful carrying out of the duties assigned to that office, he/she shall, with the consent of the board of directors, have the right to delegate their execution, under his/her supervision, to employees of the Association.

Section 9. *Powers and Duties of the Board of Directors.*

Except as otherwise provided by these by-laws, the management of the affairs of this Association is vested in its board of directors. The board of directors shall have power to adopt such rules for its own government and for the government of the Association as are not inconsistent with the provisions of these by-laws. On behalf of the Association, its powers shall include, but shall not be limited to, the power to: fill by appointment all vacancies which may occur on the board of directors of the Association (except that a vacancy occurring during the last four months of the two-year term of any elected director shall not be filled), all of whom shall serve at the pleasure of the board of directors and shall receive such compensation, if any, as it may fix and determine from time to time; provide, furnish, maintain, make arrangements for, purchase, control, lease, regulate and otherwise act in the interest of providing a library, offices, conference and social rooms, eating and drinking facilities and other things and services for the use of the Association and its members; provide for and maintain an official publication of the Association and make rules whereby notices published therein shall give notice to members of the Association; make such regulations not inconsistent with these by-laws as shall, in its judgment, be necessary or proper for the protection of the property of the Association, or for the management of its affairs, and to see that such regulations are enforced; cause a record to be kept by or through the secretary of its proceedings and of all other matters of which it shall deem a record desirable; take, institute and maintain, on behalf of the Association, all measures and actions, including legal proceedings, directed by the Association, or which in the judgment of the board of directors may be necessary or proper to carry out the will of the Association for the accomplishment of the purposes for which the Association is established; appoint or otherwise provide for such standing or special committees as it may deem in the interest of the Association and not inconsistent with the provisions of these by-laws; and execute the will of the Association in all particulars. Any action required or permitted to be taken by the board of directors may be taken without a meeting of all members of the board individually or collectively consent in writing to such action.

Section 10. *Provisions for Membership Ballot on Special Questions.*

(a) *Judicial Offices:* Except when causing the Association to act or acting on behalf of the Association as provided in Article IV hereof, the board of directors shall not take any position with respect to or make any public announcement concerning the nomination, appointment, election or removal of a judge (including those specified in Article IV, Section 5 hereof), without first submitting to the active members by mail ballot (as hereinabove provided for in the case of contested elections), the question whether the Association should support, oppose or take no position with respect to such nomination, appointment, election or removal; provided, however, that the board of directors may take and publicly announce a position on a matter referred to in this subsection if a meeting of the board of directors is held and not less than two-thirds of the entire board of directors by affirmative vote or by written approval determine that the delay occasioned by submission of the question to the active members would impair the effectiveness of any action to be taken by the Association; and provided further that the public announcement shall clearly state that the position taken is that of the board of directors of the Association and shall state the number of directors voting in favor of and against such position.

In submitting a question to the active members under this subsection, the board of directors may include its recommendation on the question, may include written statements in support of and in opposition to the question submitted, and shall fix the time within which the vote shall be cast. The board of directors shall publicly announce the result of the vote regardless of the number of active members who cast votes. The public announcement shall state the number of active members who voted to support, to oppose, and to take no position with respect to the question submitted.

(b) *Contest for the Office of District Attorney, Public Defender and City Attorney:* The president shall appoint a special committee to conduct a plebiscite of active members for the purpose of ascertaining and publishing their views regarding candidates in contested elections for the office of district attorney, public defender and city attorney.

The plebiscite shall be held at a time which will permit publication of its results well in advance of the contested election. Each candidate shall be permitted to distribute with the ballot a statement of qualifications and purposes, the length of which is to be determined by the Plebiscite Committee.

The Committee will make public the results of the plebiscite promptly. The candidate shall be considered "endorsed" by the Association if: "(1) In a two candidate contest, one candidate receives sixty percent (60%) or more of the total vote, and ballots of at least one-third (1/3) of those eligible to vote are returned. (2) In a three or more candidate contest, the candidate receiving the most votes receives more than fifty percent (50%) of the total vote, and ballots of at least one-third (1/3) of those eligible to vote are returned."

(c) *Other Questions*: The board of directors may by a majority vote of all directors submit to the members by mail ballot (as hereinabove provided for in the case of contested elections) any question, matter or proposition, and a majority of the votes cast by mail by the members of the Association entitled to vote shall govern the Association upon the matter submitted if and provided that not less than one-half (1/2) of the members entitled to vote, vote thereon. A similar ballot by mail shall also be conducted by the board of directors promptly following its first meeting held after the filing with the secretary of a written request therefor signed by one-third (1/3) or more of the members of the Association entitled to vote. The board of directors shall make reasonable provision to prescribe, fix and determine the form of the question, matter or propostion to be referred to the Association and the time within which such vote shall be cast.

(d) Any plebiscite may be extended to poll all, or substantially all, lawyers whose principal office is in San Francisco, subject to prior approval of the board of directors with respect to each such plebiscite. The board of directors may provide other plebiscite procedures not inconsistent with the foregoing.

Section 11. *Committees and Sections.*

(a) The Association shall have such committees and sections as the board of directors may from time to time establish.

(b) This section shall not apply to the committee on the Judiciary established pursuant to Article IV of these By-Laws.

(c) The classes of committees of the Association shall be:

(1) Standing Committees, created by resolution of the board of directors for the investigation and study of matters relating to the accomplishment of the general purposes, business and objects of the Association of a continuous and recurring character, within the limitations of the power conferred. Each Standing Committee shall submit to the board of directors an annual report no later than December 31st of each year, and an interim report no later than July 15th of each year covering the period January 1 through June 30. The annual report shall include an evaluation of the Committee's accomplishments during the year, the record of member participation, and plans and priorities for the coming year.

(2) Special Committees, created by resolution of the board of directors defining the powers and duties of such committees, to investigate and study matters relating to specific purposes, business and objects of the Association of an immediate or non-recurring character. The life of any Special Committee shall continue until the end of the next annual meeting following its creation unless continued by action of the board of directors.

(3) Advisory Committees, created by resolution of the board of directors and associated with any Standing or Special Committee of the Association, for the purpose of enabling such Standing or Special Committee to have the advice and opinion of a cross-section of the members of the Association. An Advisory Committee shall function under the direction and supervision of the Committee to which it is related.

(d) Unless otherwise stated in the provision creating a Committee, the president shall appoint members to serve on Committees of the Association for the term provided in the by-laws and shall, subject to the concurrence of the board of directors, designate annually the chairman and vice chairman of every Committee. The president shall appoint a member of the board of directors to serve as liaison with each Committee of the Association. In the event of the resignation, death or disqualification of any member of the Committee, the President shall appoint a successor to serve for the unexpired term. If the president-elect, during his or her term as president-elect, wishes to designate committee chairmen and vice chairmen to serve during the following year, he or she may do so and, in that event, the approval of such appointments by the board of directors may be made by either the board of directors serving at the time the president-elect makes such appointments or by the board of directors serving during the following year.

(e) The number and tenure of members of the Committees of the Association shall be:

(1) Standing Committees. Unless the Bylaws otherwise provide, the number of members of each Standing Committee shall be designated by the resolutions creating it, and each member of a Standing Committee shall serve until the adjournment of the next annual meeting following his appointment. Standing Committees may allow non-attorneys to serve when the non-attorney works in a related field or has special knowledge pertaining to the subject area of the committee. Each Standing Committee shall adopt guidelines for non-attorney membership. Such guidelines will be approved by the Board of Directors. Each committee's guidelines may further restrict the definition of non-attorney eligibility futher than provided for in this section.

(2) Special Committees. The number of members of each Special Committee shall be designated by the resolution creating it, and each member shall serve until the adjournment of the next annual meeting following his appointment.

(3) Advisory Committees. The number of members of each Advisory Committee shall be designated by the resolution creating it, and each member shall serve until the adjournment of the annual meeting following his appointment.

(f) Meetings of each Committee shall be held upon call of its chairman.

(g) Any member of the Association shall be eligible for membership in one or more sections of the Association, and may become a member by filing of an appropriate application and the payment of section dues, if any. Sections may allow non-attorneys to serve when the non-attorney works in a related field or has special knowledge pertaining to the subject area of the section. Each section shall adopt guidelines for non-attorney membership. Such guidelines shall be approved by the Board of Directors. Each section's guidelines may further restrict the definitiion of non-attorney eligibility further than provided for in this section.

(h) The officers of each section shall be elected annually by the section members, subject to confirmation by the board of directors, and said officers shall also serve as members of the Section Executive Committee. Additional members of the Section Executive Committee shall be appointed by the chairman of the section subject to confirmation by the board of directors.

(i) Each section authorized or created pursuant to this Article II shall be governed by such by-laws as shall not conflict with the Articles of Incorporation, these by-laws, and any directives issued by the board of directors. A certified copy of the By-Laws of each Section and of all amendments thereto shall be filed with the executive secretary immediately upon adoption.

(j) The Executive Committee of a section, if its by-laws so provide, shall have the authority to fix dues for membership in the section in an amount not to exceed $15.00 per year.

(k) All dues and other funds collected by a section shall be deposited with the Association to the credit of the section and may be drawn upon and expended as may be directed by the Executive Committee of the section, provided, however, that the Association shall deduct from the section account:

1. *Association Expenses*
   - (a) All direct costs expended on section activities (e.g. printing, postage, mail handling charges, etc.) and
   - (b) A surcharge of 25% of the net proceeds from any activity, event or educational program in order to cover administrative overhead and support services.
2. *Limitation on Section Accumulations*
   In January of each year, the Executive Director of the Association shall report to the board of directors and each Section Chair the accumulated balance in each section's account. The board of directors, after consulting with the Executive Committee of the Section, may direct that part of the surplus funds in any section's account be transferred to the Association's general account, whenever it appears to the board that said surplus funds exceed the reasonable needs of the section for the balance of the calendar year.

Section 12. *Representation of the Association.*

(a) *Officers and Board of Directors.* The elected representatives of the members of the Association, the Officers and board of directors, are the only body which may authorize representation of the Association before judicial, legislative, administrative or executive bodies of the Federal, State or local governments and who may authorize publication of any report or recommendation on behalf of the Association.

(b) *Representation Before Judicial and Administrative Bodies.* A Section, committee or member of the Association must obtain the prior approval of the board of directors in order to represent the Association before any judicial or administrative body in connection with adjudication. The position to be taken before such body on behalf of the Association must be approved in advance by the board of directors. A substantial copy of any proposed pleadings or briefs to be filed on behalf of the Association in connection with such matters shall be submitted in advance of filing for review by the board of directors for approval or approval in principle.

(c) *Representation Before Legislative, Administrative and Executive Bodies.* A Section, Committee or member of the Association must obtain the prior authorization of the board of directors to appear on behalf of the Association before any legislative, administrative or executive body. A substantial copy of any proposed testimony, report, draft legislation or other presentation to be submitted to such bodies shall be submitted in advance to the board of directors for approval or approval in principle.

(d) *Publication of Reports and Recommendations.* A Section, Committee or member of the Association shall submit a substantial copy of any report or recommendation prior to its publication (whether oral or written) to the board of directors for approval or approval in principle.

(e) *Representation by Sections, Committees and Members.* A Section, Committee or member may participate in meetings with other persons in the preparation of reports, recommendations or proposed positions on behalf of the Association. Such participation may include discussions, correspondence, circulation of draft reports and recommendations. Unless a report or recommendation to be considered in such participation has been approved or approved in principle by the board of directors, the Section, Committee or member shall make it clear that its proposals are the views of the individual members and not a position adopted by the Association.

(f) *Legislative Representation and Issuing of Reports to the Public by Sections and Standing Committees of the Association.* Sections and Standing Committees of the Association are authorized to take public positions, issue reports and appear before legislative, administrative or executive bodies in rule-making proceedings (but not in adjudicatory proceedings) without the prior approval of the board of directors provided that:

(1) the position represented by the Section or Standing Committee is clearly stated to be the position of the Section or Standing Committee and not the position of the Association;

(2) the position presented has been adopted by the members of the Section or Standing Committee in accordance with procedures prescribed by the board of directors;

(3) notice of the position to be presented including a substantial copy of any written materials or proposed testimony is submitted to the board of directors at least 15 days in advance of the date such materials are to be presented; such notice shall also state that the position and the members voting in opposition to the position;

(4) upon review of a position to be presented by a Section or Standing Committee pursuant to these procedures, the board of directors may adopt the position on behalf of the Association, may withdraw the authorization for the Section or Standing Committee to present the position as the views of such Section or Standing Committee, or take such other and further action as it deems desirable.

ARTICLE III

Meetings

Section 1. *Meetings of Members; Quorum.*
There shall be an annual meeting of the active members of the Association in the month of December. Said meeting shall be held at the headquarters of the Association or at such other place in San Francisco at such time as ordered by the board of directors. Notice thereof shall be mailed to each active member at least five (5) days in advance of such meeting. Special meetings of active members may be called at any time by the board of directors or by the president. The president shall call a special meeting promptly after receipt by him of a petition therefor signed by at least one hundred (100) active members. Special meetings shall be held at the headquarters of the Association or at such other place in San Francisco as the call may designate. No business shall be transacted at any such special meeting except the business specified in the call. Notice of any such special meeting shall be mailed at least seven (7) days before the date of such meeting and such notice shall specify the business to be transacted. The presence of at least one hundred (100) of the active members of the Association shall be necessary to constitute a quorum at any meeting of the active members; but a smaller number may adjourn any such meeting to a subsequent time. Those active members who attend the meeting referred to in Section 3 of Article II of these by-laws shall constitute a quorum regardless of number.

Section 2. *Meetings of Board of Directors.*
There shall be regular meetings of the board of directors at such times during each month as may be determined by said board. Said meetings shall be held at the headquarters of the Association or at such other place in San Francisco as ordered by the president. Notice thereof shall be mailed to each director at least five (5) days in advance of each meeting. Special meetings of the board of directors may be called at any time by the president or by seven (7) members of the board. Special meetings shall be held at the headquarters of the Association or at such other place in San Francisco as the call may designate. No business shall be transacted at any special meeting except the business specified in the call. Notice of any such special meeting shall be mailed at least two (2) days before the date of such meeting and such notice shall specify the business to be transacted. Except as otherwise specified in these by-laws, nine (9) members of the board of directors shall constitute a quorum; but a smaller number may adjourn any meeting to a subsequent time. A cumulative record of attendance of each board member at regular and special meetings of the board of directors shall be published at least every six months in an official publication of the Association distributed to all members.

ARTICLE IV

JUDICIARY COMMITTEE

Section 1. *POLICY STATEMENT.*

(a) *Scope.* There shall be a Judiciary Committee (hereinafter the "Committee") which shall be concerned with the selection of judges for the Superior and Municipal Courts for the State of California, in and for the City and County of San Francisco. The Committee may also be concerned with the selection of judges for the United States District Court for the Northern District of California, the United States Court of Appeals for the Ninth Circuit, the Supreme Court of California, the California Court of Appeal, First Appellate District, or any other court connected with the administration of justice in the City and County of San Francisco as the Committee deems appropriate. As is further specified in this Article IV, the Committee shall evaluate candidates for judicial office, including judges under consideration for elevation, and make a report of such evaluation to the appointing and recommending authority in the matter of appointments of such judges and to the Board of Directors of the Bar Association of San Francisco (hereinafter the "Association") in the matter of election of candidates to such judicial offices. In the discharge of this responsibility, the Committee shall consider the character, temperament and professional aptitude and experience of such candidates for judicial office without regard to political considerations.

(b) *Reports Upon Request.* Upon receipt of a request for evaluation of a candidate for judicial office, as submitted by the appointing authority, or duly constituted recommending or approving authority, the Committee shall evaluate the person in accordance with the procedures set forth in this Article and shall make its report to the said authority.

(c) *Sua Sponte Reports.* In those cases where a majority of the members (but not less than 8) present at a meeting of the Committee desire to evaluate a candidate for judicial office, but there has been no such request therefor, the Committee may proceed with an evaluation and report as hereinafter provided and the report may, at the Committee's discretion, be forwarded to the appropriate appointing, recommending or approving authority of the legal jurisdiction, or to an appropriate committee of the State Bar of California or of the American Bar Association for action.

(d) *Reports on Candidates for Election to Judicial Office.* Where no plebiscite by the members of the Association is to take place with respect to the election of candidates to judicial offices described in paragraph 1(a), and upon the request of the President of the Association (hereinafter the "President"), the Committee shall evaluate said candidates and report to the Board of Directors for the purpose of advising the Board regarding the Association's support or endorsement of a candidate or candidates.

Section 2. *JUDICIARY COMMITTEE.*

(a) *Membership.* The Judiciary Committee shall consist of the president-elect and twenty-one (21) members of the Association of recognized standing, judgment and independence. The President may also attend meetings, deliberate and consult with the Committee; however, she or he shall not vote nor be counted for the purpose of determining a quorum.

(b) *Appointment.* The members of the Committee shall be appointed by the President, subject to the approval of the board of directors. Insofar as possible, the President shall appoint to the Committee persons representing a broad cross-section of the Bar.

(c) *Term.* The terms of the appointed members of the Committee shall be three (3) years, but such terms shall be staggered so that seven (7) members shall be appointed annually. Any member may be removed at the discretion of the President upon the recommendation of the Chair of the Committee, or at the discretion of the President with the approval of the board of directors.

(d) *Chair.* The Chair of the Committee shall be appointed by the President to serve for a term of one (1) year. No person shall be appointed Chair who has not served as a member of the Committee for at least one (1) full year prior to the beginning of his or her term as Chair.

(e) *Vacancies.* In the event of a vacancy, the President shall appoint a qualified person to fill the unexpired term of the member, subject to the approval of the board of directors.

(f) *Eligibility for Reappointment.* No member of the Committee shall be eligible for reappointment to the Committee until after a lapse of one (1) year from the expiration of his or her term or from his or her resignation from the Committee; provided, however, that a member who has been appointed for a term of less than three (3) years, whether to fill a vacancy or otherwise, may be reappointed for a new, full three (3) year term.

(g) *Disqualification.* No person who seeks appointment or election to any judicial office shall be eligible for appointment as a member of the Committee. Any member of the Committee who seeks or is under consideration for appointment or election to a judicial office shall forthwith resign or be removed from the Committee and shall be ineligible for appointment to the Committee for a period of two (2) years thereafter.

Section 3. *MEMBER'S DUTY OF FIDELITY.*

(a) No member of the Committee shall make any advance commitment as to how he or she will vote at any Committee meeting concerning the qualifications of any person to be considered by the Committee. Members of the Committee, except the Chair, may endorse or campaign for the election of candidates to judicial office so long as no reference is made or permitted to be made to the fact of membership on the Committee.

(b) Except as herein otherwise specifically provided, the discussions at the Committee meetings pertaining to the qualifications of persons to be considered by the Committee shall be completely confidential; and no member of the Committee shall disclose to anyone not a member of the Committee any of the deliberations or the action taken by the Committee or any statement made at a Committee meeting pertaining to the qualifications of any person whose name has been submitted to, or has been considered by, the Committee.

(c) It shall be regarded as a violation of the fidelity a member owes to the other members of the Committee, to the Association, and to the public trust undertaken upon becoming a member of the Committee for any member to make a commitment or disclosure in violation of this Section. Any member who makes such a commitment or disclosure shall be subject to immediate removal as a member of the Committee by the President. Any member so removed shall have a right to appeal to the board of directors, but the appeal shall be restricted to the factual question of whether the member made the commitment or disclosure which resulted in removal as a member of the Committee.

Section 4. *CONFLICTS OF INTEREST.*

(a) If any member of the Committee perceives a potential conflict of interest between the member and a candidate being evaluated (such as family relationship, past or present membership in the same law firm, or a potential or existing financial relationship), that matter shall be brought to the attention of the Chair of the Committee. The Chair shall rule on the question of conflict and, if a conflict is found, so advise the affected member who shall withdraw as required by Section (b). If the affected member refuses to withdraw, the Committee shall then vote as to whether an actual conflict of interest does exist.

(b) If an actual conflict of interest is found to exist, the member shall not participate in the discussion of the qualifications of the candidate and shall not be present during nor participate in any voting on the qualifications of the candidate. The member may, however, at the Committee's discretion, address the Committee regarding the candidate.

(c) As required by Section 3(a), each member shall forebear making reference to, and affirmatively assume the responsibility for preventing the use of, or reference to, his or her membership on the Judiciary Committee in connection with the member's support of or opposition to any candidate for office within the jurisdiction of the Committee.

Section 5. *MEETINGS.*

(a) The Committee shall hold such meetings as the Chair may call on not less than twenty-four (24) hours' notice. Notice may be given by telephone.

(b) *Quorum.* Eight (8) members of the Committee shall constitute a quorum, which quorum must exist at any time a vote is taken.

(c) *Absences.* Any member who has three (3) unexcused absences in any calendar year from meetings of the Committee called pursuant to Section 4(a) above shall be removed by the President on recommendation of the Chair.

(d) *Evaluation Categories.* In determining the qualification of candidates for judicial office, the members shall vote to assign one of the categories defined below to the person evaluated:

(1) "Qualified"—meaning that the candidate possesses the attributes listed in Section 7(b) so as to indicate the ability to satisfactorily perform the judicial function for which she or he is being considered.

(2) "Well-Qualified"—meaning that the candidate posseses all the attributes required for a rating of "Qualified" and possesses one or more of those positive attributes to such a high degree as to be indicative of superior fitness to perform the judicial function for which he or she is being considered.

(3) "Exceptionally Well-Qualified"—meaning that the candidate posseses all the attributes required for a rating of "Well-Qualified" and possesses several or all of those positive attributes to such an extremely high degree as to be indicative of exceptional fitness to perform the judicial function for which she or he is being considered.

(4) "Not Recommended For Appointment At This Time"—meaning that the candidate lacks one or more of the attributes required for a rating of "Qualified" at the time of evaluation but that the Committee considers the deficiency capable of correction in the future, e.g., lack of experience.

(5) "Not Qualified"—meaning that the candidate lacks one or more of the attributes required for a rating of "Qualified" to such an extent that the Committee doubts the candidate's fitness to perform satisfactorily the judicial function for which he or she is being considered.

(6) "No Action"—meaning that a majority of the Committee consisting of at least eight members has been unable to assign one of the other categories to the candidate.

(e) *Voting.* Each member shall be allowed one vote on each category described below. Vote by proxy is not allowed. The President may not vote.

The Chair shall determine the extent of deliberation as to any person under consideration and then shall put the matter to the vote, voting first on the category "Qualified." If a majority vote (consisting of at least eight votes) is cast, the vote shall then be so taken on the category "Well Qualified" and if a majority vote (consisting of at least eight votes) is cast, the vote shall then be so taken on the category "Exceptionally Well Qualified."

If there is not a majority consisting of at least eight votes in favor of "Qualified," the vote shall then be so taken on the category "Not Recommended For Appointment At This Time" and if there are not sufficient votes cast, the vote shall then be so taken on the category "Not Qualified," and if there are not sufficient votes for that category, the action of the Committee shall be "No Action."

(f) *Minutes.* The Chair shall keep minutes of the Committee meetings and shall include therein information concerning attendance and presence of a quorum, the Committee's evaluation as to each candidate's qualifications, and the number of votes which determined that evaluation. At the beginning of each meeting, the minutes for the previous meeting shall be approved or corrected. The minute book shall be available for inspection by the members of the Committee at reasonable times.

Section 6. *RECONSIDERATION OF EVALUATION.*

(a) When the Chair of the Committee receives requests for reconsideration of the Committee's action from a member of the Committee who voted with the majority in the previous action, the Chair shall give notice to all members of the Committee that a vote to reconsider the candidate will occur at the next meeting.

(b) At that meeting, after an opportunity for discussion, the Committee shall vote on the request for reconsideration. Reconsideration must be supported by a vote of a majority in number (but not less than eight) of the members present.

(c) When the vote of the Committee is to reconsider the evaluation, the candidate shall be treated as a new candidate under Section 7.

Section 7. *PROCEDURE FOR INVESTIGATION AND EVALUATION OF CANDIDATES.*

(a) *Questionnaire.* The Chair shall send each candidate a standard form of questionnaire or may use the questionnaire provided by the appointing authority.

(b) *Investigation.* In conducting its investigation, the Committee shall inquire into, among other matters, the following attributes of the candidate being evaluated: (1) integrity and character; (2) judgment and intellectual capacity; (3) professional experience; (4) industry and diligence; (5) judicial temperament, including whether the candidate would be courteous and considerate of counsel, parties, witnesses and jurors, and whether the candidate is even-tempered; (6) decisiveness; (7) ability to transcend personal biases; (8) professional ability and knowledge of the law; (9) health: (10) general reputation in the community; (11) civic and community activities. The Chair may appoint a subcommittee to conduct an investigation of the qualifications of each candidate. In order to obtain information to supplement that contained in the questionnaire, members of the Committee shall confer with judges, lawyers and others having knowledge of the person's aforementioned attributes, and may take other reasonable steps to obtain information. Efforts shall be made to verify all information, and a special effort shall be made to verify information from sources who decline to have their names disclosed to the Committee.

(c) *Interviews.* Each candidate being evaluated shall be personally interviewed by the Committee (unless the candidate refuses).

(d) *Non-Cooperating Candidates.* The Committee shall evaluate those persons who decline to return the questionnaire or to appear for interview on the basis of the best information the Committee can obtain.

(e) *Committee Evaluation Meetings.* The Committee shall meet for the purpose of evaluation, subcommittees (if any) shall report to the Committee, and pertinent information obtained by other members of the Committee shall be presented. The Committee shall carefully consider at the meeting whether or not such persons possess the qualities prescribed in Section 7(b). Following due deliberation, the Committee shall determine the qualifications of such person by vote in accordance with the provisions of Section 5.

(f) *Report.* The evaluation may be reported only as provided in Sections 8 and 10, following.

Section 8. *PROCEDURE FOR REPORT.*

The report of the Committee shall be made as soon as practicable consistent with the necessity of proper investigation and evaluation of the candidate. The report shall be limited to the rating by category given to the candidate by the Committee for those candidates rated as "not qualified," "not recommended for appointment at this time," or "no action." The report for candidates rated "Qualified," "Well Qualified," or "Exceptionally Well Qualified" may indicate the rating by category and the Committee's vote in each category, but votes cast by individual members of the Committee shall not be disclosed. The effective date of this provision is January 1, 1984.

Section 9. *OBTAINING COMMITMENTS FROM APPOINTING AUTHORITY.*

(a) *Ascertaining Preference.* Promptly after the election or assumption of office of a person who is authorized to appoint judicial officers as contemplated in Section 1, the President shall ascertain the views of such person concerning his or her agreement to submit to the Committee for evaluation the names of persons proposed for appointment. If he or she should refuse to submit to the Committee for its investigation and report the names of persons under consideration for appointment to judicial office, the Committee may proceed in accordance with Section 1(c).

(b) *Commitment Regarding Appointment.* The President shall also seek the commitment of the appointing authority or the recommending authority not to appoint or recommend any person whose name has not been submitted to the Committee (as to the offices described in Section 1), or who has been evaluated as "Not Qualified."

Section 10. *REPORT TO COMMISSION ON JUDICAL APPOINTMENTS.*

When a nomination for appointment to the Supreme Court or to the Court of Appeal has been made and is pending before the California Commission on Judicial Appointments, the Committee may by majority vote authorize the chairperson of the Committee (or another member of the Committee) to advise the Commission, in writing or by personal appearance or both at a hearing on the nomination, of the rating given the nominee by the Committee and the basis and reasons for the Committee's decision, not including the vote count or comments of particular Committee members or identity of sources of information.

ARTICLE V

Plebiscite on City and County Judges

Section 1. *Policies.*

(a) *Concerning Retention of Judges.* It is the duty of this Association to preserve an independent judiciary. As an essential element of the preservation of an independent judiciary, the Association endorses the principle that an incumbent judge, whether serving by appointment or election, is entitled to be re-elected if endorsed by a plebiscite of the bar pursuant to this Article V.

(b) *The Judicial Plebiscite.* The Association shall conduct a plebiscite (hereinafter called the "judicial plebiscite") of its members for the purpose of ascertaining and publishing their views regarding candidates in contested elections for judicial offices in the Superior and Municipal Courts of the State of California, in and for the City and County of San Francisco.

Section 2. *Plebiscite Committees.*

The Board of Directors shall appoint a special committee (hereinafter called the "Plebiscite Committee") to conduct the judicial plebiscite according to the provisions of this Article V in connection with any election, including primaries, in which a judicial office is contested. The Plebiscite Committee shall conduct the judicial plebiscite. It shall promptly determine and publish the results of each plebiscite.

Section 3. *Timing of the Plebiscite.*

A judicial plebiscite shall be held promptly following the expiration of the period in which a Declaration of Candidacy must be filed, If, as a result of a primary election, there is a run-off election, a second plebiscite shall be held, unless one of the run-off candidates was endorsed by the Association hereof as a result of the judicial plebiscite held prior to the primary election, in which case the endorsement resulting from the primary will remain the position of the Association for the general election.

Section 4. *Form of the Ballot.*

The ballot form shall:

(a) List separately each judicial office, followed by the respective candidates in alphabetical order.

(b) Describe incumbents of the contested judicial office as incumbents.

(c) Contain either of the following questions, depending on circumstances: Yes

(1) Should Judge ______________ be retained?;
Should ______________ be elected?;
(plus a repetition of this line depending on the number of candidates).

(2) Should ______________ be elected?
Should ______________ be elected?;
(plus a repetition of this line depending on the number of candidates.)

(d) Prohibit [illegible] more than one candidate for each judicial office.

N.B. The prohibition specified in Paragraph (d) shall be underlined.

(e) In the event that any candidate for judicial office fails to agree in writing that the conduct of his or her campaign has and will conform to the *Guidelines for Conduct of Campaigns for Judicial Office*, promulgated from time to time by the Judicial Campaigns Committee, the name of such candidate will be omitted from the plebiscite ballot and the materials distributed with the ballot, and the form of the ballot set forth above shall be modified accordingly. The members shall be informed of the reason for the omission of such candidate's name from the ballot.

Section 5. *Endorsement.*

The Plebiscite Committee shall designate a candidate endorsed by the Association if:

(a) In a two candidate contest, one candidate receives sixty percent (60%) or more of the total vote, and ballots of at least one-third (1/3) of those eligible to vote are returned.

(b) In a three or more candidate contest for judicial office, the candidate receiving the most votes receives more than fifty percent (50%) of the total vote, and ballots of at least one-third (1/3) of those eligible to vote are returned.

For the purpose of determining endorsements of a candidate for a particular office, a ballot shall not be counted if it contains votes for more than one candidate for that office, or is unmarked.

Section 6. *Miscellaneous.*

The judicial plebiscite may be extended to poll all, or substantially all, lawyers whose principal office is in San Francisco, subject to prior approval of the board of directors with respect to each such plebiscite. The board of directors may provide other plebiscite procedures not inconsistent with the foregoing.

ARTICLE VI

Interest of Members in Assets and Disposal of Assets in the Event of Winding Up or Dissolution

Section 1. *Rights of Members on Termination of Membership; Disposal of Assets on Dissolution.*

All of the assets of this corporation shall during its existence be deemed to be held in trust by the directors of the corporation for the purposes set forth in the articles of incorporation, and any and all rights of a member in the organization cease upon death, resignation or other termination of membership. In the event of a winding up or dissolution, after paying or adequately providing for the debts and obligations of the corporation, the directors shall dispose of any remaining assets for legal educational purposes in such manner as may be directed by decree of the Superior Court of the State of California in and for the City and County of San Francisco upon petition filed for that purpose by said directors.

ARTICLE VII

Barristers' Club

Section 1. *Membership.*

(a) All active members of the Bar Association of San Francisco shall also be members of the Barristers' Club until the 31st day of December of the year in which any such member attains the age of thirty-six (36) years, or until the expiration of any term as a director of this club which such member commenced serving prior to said 31st day of December, or until the 31st day of December following the member's fifth year of admission to the practice of law, whichever is later.

There shall be no additional dues payable for such membership.

(b) The Barristers' Club shall maintain an active membership committee which will co-ordinate its activities with the membership committee of the Association.

Section 2. *Organization and Relationship to the Association.*

(a) The Barristers' Club shall have its own constitution which shall be approved by the board of directors of this Association. Amendments to the constitution of the Barristers' Club may be made as provided by said constitution, subject to the approval of the board of directors of the Association. The Barristers' Club shall conduct its affairs in accordance with its constitution and by-laws.

(b) When not in direct conflict with the officially announced policy of the Association, the Barristers' Club, acting in accordance with its constitution and by-laws, may take such positions on matters of public affairs as it deems proper without the prior approval of the board of directors of the Association.

(c) The Barristers' Club shall be represented on the delegation of the Association to the Conference of State Bar Delegates (both as delegates and alternate delegates) in the same proportion as its membership bears to the total membership of the Association. The Association's delegates and alternate delegates chosen from the Barristers' Club for this purpose shall be appointed by the president of the Association from a list compiled and submitted by the board of directors of the Barristers' Club to said president.

Section 3. *Finances.*

The board of directors shall, at the beginning of each year, allot to the Barristers' Club such sum of money as the board of directors determines is necessary for it to have in carrying out its program. Additional sums may be allotted during the year when and if the board of directors determines such allotment is necessary. The Barristers' Club shall, at the end of each year, render a financial report to the board of directors stating the nature and amount of the disbursements from these funds.

ARTICLE VIII

Adoption, Amendment or Repeal of By-Laws

Section 1. *Changes in By-Laws.*

These by-laws may be amended or repealed, or new by-laws adopted:

(a) By the affirmative vote of a majority of the entire membership of the board of directors at any regular or special meeting of such board, subject to the power of the members to change or repeal the by-laws; or

(b) By the vote or written assent of a majority of the members of the Association entitled to vote; or

(c) By the vote of a majority of a quorum at a meeting of members of the Association duly called for such purpose.

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
WARD M. KENNEDY, MASSACHUSETTS
OBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

April 29, 1988

Charles C. Marson, Esq.
Chair, Judiciary Committee
Bar Association of San Francisco
San Francisco Bar Center at the Monadnock
685 Market Street, Suite 700
San Francisco, CA 94105

Dear Mr. Marson:

Thank you for your letter of April 18, reporting the evaluation of the Judiciary Committee of the Bar Association of San Francisco on the nomination of Vaughn R. Walker to be United States District Judge for the Northern District of California.

Evaluations of judicial nominees by voluntary bar associations can be quite valuable to the Senate Judiciary Committee in its consideration of nominations to the federal courts. Ordinarily, such evaluations are circulated to all Committee members and are made part of the public record of the nomination. Since your letter to me was marked "Personal and Confidential," your letter has not yet been circulated. Please let me know as soon as possible if your committee has any objection to the inclusion of your letter in the public record on the Walker nomination. I may be reached at (202) 224-8191.

I would also appreciate it if you or another officer of the Bar Association of San Francisco would advise me if any action is taken on your committee's report by the Association's board of directors, or by the Association's membership at large.

Thank you for providing your committee's evaluation of this important nomination.

Sincerely yours,

Steven J. Metalitz

Steven J. Metalitz
Chief Nominations Counsel

BASF
BAR ASSOCIATION OF SAN FRANCISCO

June 3, 1988

Edward E. Kallgren
President
Judith E. Ciani
President-Elect
Peter G. Keane
Treasurer
Michael G.W. Lee
Secretary
Drucilla Stender Ramey
Executive Director &
General Counsel
Joan Evjenth
Deputy Executive Director
Barbara Fanning
Continuing Legal Education
Committees and Sections
Margaret Sparks
Publications and
Public Affairs
Tanya Neiman
Director, Volunteer
Legal Services Program
Associate General Counsel
Carol Woods
Director, Lawyer
Referral Service

BOARD OF DIRECTORS
Ralph Santiago Abascal
Barry A. Abbott
Alice M. Beasley
Cedric C. Chao
Robert V. R. Dalenberg
Phyllis Kay Dryden
Patricia S. Green
Joan Graff
Sarah Hofstadter
Robin E. Levine
Otis McGee, Jr.
Armando Menocal
Beth H. Parker
Jeffrey S. Ross
Richard J. Stratton

EX-OFFICIO MEMBERS
BARRISTERS CLUB
(January-July 1988)
Jonathan V. Holtzman
President

Editor
San Francisco Banner/Daily Journal
1390 Market Street, Suite 910
San Francisco, California 94102

Dear Editor:

The Judiciary Committee of the Bar Association of San Francisco recently conducted a confidential evaluation of the fitness of Mr. Vaughn Walker for appointment to the United States District Court for the Northern District of California, and reported the result of that evaluation to the Judiciary Committee of the United States Senate. In an article in the Banner/Daily Journal of May 25 Abby Ginzberg and Mary Dunlap erroneously characterized the result of that evaluation by stating that three committee members found Mr. Walker "well qualified" for the position, seven found him "qualified," and six found him "unqualified."

Normally BASF does not comment publicly on its confidential reports to appointing and recommending authorities. This report, however, has been released by the Senate and has become publicly known. Contrary to the description of the report given by Ms. Ginzberg and Ms. Dunlap, the Judiciary Committee's report states in relevant part:

> . . . Mr. Walker received a rating of "qualified" for appointment to the United States District Court for the Northern District of California from the Judiciary Committee of the Bar Association of San Francisco. For your information, from the **16 members present**, Mr. Walker received 10 votes for qualified and three votes (of the 10) for well qualified.

San Francisco Bar Center at the Monadnock
685 Market Street, Suite 700, San Francisco, CA 94105 (415) 764·1600 Lawyer Referral (415) 764·1616

BASF
BAR ASSOCIATION OF SAN FRANCISCO

Editor
San Francisco Banner/Daily Journal
June 3, 1988
Page Two

BASF's By-Laws provide that a candidate for judicial office shall be placed in the highest category for which s/he receives a majority vote of the committee, consisting of at least eight votes. The By-Laws also provide that if a candidate is placed in the category "qualified" or higher, no vote is taken on the category "unqualified" or any other negative category.

The article is therefore incorrect in saying that seven members found Mr. Walker "qualified"; the report shows that ten did. It is also incorrect in suggesting that any vote for "unqualified" was taken.

Sincerely,

Edward E. Kallgren
Edward E. Kallgren
President, Bar Association of
San Francisco

Charles C Mar
Charles C. Marson
Chair, Judiciary Committee, Bar
Association of San Francisco

cc: Vaughn Walker
Steven J. Metalitz
Abby Ginzberg
Mary Dunlap

Senator LEAHY. But I would also think, and I would ask the Senator to give the courtesy of letting the witness answer the question. If the Senator does not want to let her——

Senator THURMOND. I thought she had already answered. Let her answer it again if she wants to.

Senator LEAHY. If she does not want to answer it——

Senator THURMOND. You do not have to—let her answer it again if she wants to.

Senator LEAHY. If she does not want to answer it, we can wait until it is my turn for redirect and I will ask the question again.

Senator THURMOND. Is the letter in the record, Mr. Chairman, dated June 3, 1988?

Senator LEAHY. If you want it in the record, of course it will be in the record. Anything else?

Ms. DUNLAP. Senator Thurmond, if you wish a response to your question, sir, with respect——

Senator THURMOND. It is my understanding, BASF's report to the Judiciary Committee regarding Mr. Walker's nomination was marked personal and confidential. Would you please tell the committee how you were able to obtain the findings contained in the report?

Ms. DUNLAP. Once again I must defer to Ms. Ginzberg. She will tell you how she obtained the findings of the report.

Ms. GINZBERG. Senator Thurmond, would you like me to answer that question, since I am the person who obtained that information from the Senate Judiciary Committee?

Senator THURMOND. I was going to ask you some questions, but you can go ahead now if you like.

Ms. GINZBERG. I would like just to clarify this. What happened was, I obtained the information from staff of the Senate Judiciary Committee as to what the results were of the Bar Association of San Francisco. It is up to the Senate Judiciary Committee to make that public. The bar association does not make it public.

I was informed exactly as we wrote in the article. That, in fact, there were three well qualified votes, seven qualified votes, and six not qualified votes. That turns out not to be exactly the information that you had received from the bar association. The bar association then clarified the information that I had been given, but I had been given it and the article was already in print at the point where that clarification took place.

I did not know at the time the article was written that there was this voting procedure. Therefore, I did not know that no vote had been taken on the not qualified. I had nothing in print at the point where I received the information from the Senate Judiciary Committee.

Senator THURMOND. I will come back to you in just a minute and ask you a few questions.

Ms. Dunlap, in a résumé that was turned over to the committee it specifies that from 1986 to the present that you are a member of the board of directors of Bay Area Lawyers for Individual Freedom and co-chair of Gay and Lesbian Family Committee of San Francisco. Is that true?

Ms. DUNLAP. That is right, yes.

Senator THURMOND. How is that?

Ms. **Dunlap**. That is correct. That entire résumé was prepared by me personally. Unlike the last question, Senator, that is information from my own files.

Senator **Thurmond**. Also in this résumé is—and I believe this is your résumé that you furnished.

Ms. **Dunlap**. Absolutely.

Senator **Thurmond**. There is contained a statement as from 1978 to the present you are a member of the board of advisors of the Lesbian Rights Project of San Francisco. Is that true?

Ms. **Dunlap**. Yes, Senator Thurmond, that is entirely correct. I note in your questions that you are——

Senator **Thurmond**. In the same résumé, it is stated from 1983 to the present that you are a member of the board of directors of San Francisco Arts and Athletics. Is that true?

Ms. **Dunlap**. That is correct.

Senator **Thurmond**. Is that a gay organization?

Ms. **Dunlap**. They were the founders of the gay—if I may call it that—Olympics, so I suppose they would be thought of as a gay organization. Senator Thurmond, with respect, I hear you asking me if I am a member of many, many gay organizations and I can tell you, I am.

Senator **Thurmond**. Just answer the questions I ask you.

Ms. **Dunlap**. By all means. But I wish to save you a bit of time.

Senator **Thurmond**. You can say what you want to, let me ask the questions, then you can answer it.

Ms. **Dunlap**. That is fine.

Senator **Thurmond**. In this résumé it is stated that in 1984 you co-chaired the National March for Lesbian and Gay Rights, San Francisco National Democratic Convention. Is that true?

Ms. **Dunlap**. Absolutely. Again, Senator, with respect, everything I told you in my résumé is true about me. I have done all those things and I have performed all those roles, and I am proud to present that set of credentials to the committee.

Senator **Leahy**. Why do I not just ask unanimous consent, Senator Thurmond, if you will yield just for a moment, that the——

Senator **Thurmond**. I like to ask my own questions in my own way.

Senator **Leahy**. I am not asking any question. I ask unanimous consent that the résumé be made part of the record. Is there objection?

[No response.]

Senator **Leahy**. Without objection, so ordered.

[The résumé of Mary Dunlap follows:]

#4

MARY C. DUNLAP

Born May 25, 1948 in Napa, California.

EDUCATION

Bachelor of Arts, University of California, Berkeley, with distinction in general scholarship, 1968 (major:psychology).

Juris Doctor, University of California, Berkeley, Boalt Hall, School of Law, 1971.

EMPLOYMENT

December 1986-present: Sole practitioner of law, emphasizing civil and constitutional rights causes, including employment discrimination litigation.

April 1986-November 1986: Partner, Dunlap & Thorkelson, engaged in general civil practice.

Fall 1987, Fall 1986: Adjunct professor of law, Golden Gate University, School of Law, teaching "Individual Human Rights".

1980-March 1986: Sole practitioner of law, emphasizing civil and constitutional rights causes, including employment discrimination litigation.

Fall 1985:
Adjunct faculty, New College of California, School of Law, teaching "Sex-Based Discrimination".
Visiting lecturer, Golden Gate University, School of Law, teaching "Individual Human Rights".

Spring 1985:
Adjunct faculty, New College of California, School of Law, teaching "Civil Skills II" and "Gay/Lesbian Rights".
Adjunct professor of law, University of San Francisco Law School, teaching "Sex-Based Discrimination".

Fall 1984:
Visiting lecturer, Golden Gate University, School of Law, teaching "Individual Human Rights".

Spring 1984:
Adjunct professor of law, University of San Francisco Law School, teaching "Sex-Based Discrimination".
Adjunct faculty, New College of California, School of Law, co-teaching "Sex-Based Discrimination".

Fall 1983:
Visiting lecturer, Golden Gate University, School of Law, teaching "Individual Human Rights".

EMPLOYMENT (continued)

Fall 1980-Spring 1982:
Visiting lecturer, University of California, Berkeley, in the Field Studies Program, teaching "Public Advocacy".

Summer 1980:
Seminar director and teacher, "Equal Justice Under Law", Golden Gate University, School of Law, a program for judges and lawyers funded by the National Endowment for the Humanities.

Spring 1980-Summer 1980:
Test designer and supervising evaluator, experimental project with the California Bar Examination, sponsored by the State Bar of California, Board of Bar Examiners.

Spring 1980:
Adjunct professor of law, Golden Gate University, School of Law, teaching "Commercial Law" and "The Right to Privacy".
Adjunct professor of law, University of California, Davis, School of Law, King Hall, teaching "Employment Discrimination Law".
Staff attorney, Gay Rights Advocates, Inc., San Francisco CA.

1979:
Visiting associate professor of law, University of Texas at Austin, School of Law, teaching "Administrative Law", "Employment Discrimination", "Privacy and Government", "Trial Advocacy", "Complex Litigation" and "Employment Discrimination" (clinic).

1974-1978:
Co-founder, staff attorney and teacher, Equal Rights Advocates, Inc., San Francisco CA. ERA Inc. is a non-profit public interest law firm, doing litigation, education and community support with a particular emphasis upon ending discrimination on account of sex.

Winter 1977:
Adjunct professor of law, John F. Kennedy University, School of Law, teaching "Discrimination and Law".

Spring 1977:
Adjunct professor of law, University of California, Davis, School of Law, King Hall, teaching "Sex Discrimination and Law".

Spring 1974:
Adjunct professor of law, University of California, Davis, School of Law, King Hall, teaching "Sex Discrimination and Law".

1973-1974:
Partner, Davis Dunlap & Williams, San Francisco CA., litigating discrimination, domestic relations and other cases.

EMPLOYMENT (continued)

Spring 1973:
Co-instructor, Golden Gate University, University of San Francisco and University of Santa Clara Schools of Law, teaching "Sex Discrimination and Law".

Summer-Winter 1972:
Associate, Coombs Dunlap Dunlap & Champlin, litigating criminal, civil and juvenile cases.

1971-1972:
Teaching fellow, University of California, Berkeley, School of Law, Boalt Hall, teaching "Legal Writing and Research".

LEGAL WRITING

1970-1971:
Member and book reviews editor, California Law Review.

Books

In progress: chapter for Matthew Bender, Inc. on employment discrimination litigation and practice.

Wrote chapter on employment law and co-authored chapter on First Amendment rights in Sexual Orientation and The Law (R. Achtenberg, ed.)(Clark Boardman 1985).

Sex Discrimination in Employment: Application of Title VII (Community Law Reports 1975).

Articles

"Sexual Speech and The State: Putting Pornography In Its Place," to be published in Golden Gate Law School Women's Law Forum (1987).

"Toward Recognition of 'A Right To Be Sexual'", 7 Women's Rts. Law Rptr. 245 (Spring 1982).

"Where The Person Ends, Does The Government Begin? An Exploration of Present Controversies Concerning 'The Right To Privacy'", 12 Lincoln L. Rev. 47 (1981).

"Attorneys Fees Against Governmental Defendants: Economics Requires A New Proposal", 2 West. New Eng. L. Rev. 311 (Fall 1979).

"The Constitutional Rights Of Sexual Minorities: A Crisis Of The Male/Female Dichotomy", 30 Hast.L.J. 1131 (March 1979).

"The Legal Road To Equal Employment Opportunity: A Critical View" in American Workers In A Full Employment Economy (Jt. Econ. Comm., U.S. Congress, 1978).

LEGAL WRITING (continued)

Articles

"A View of Sex Discrimination Cases Under Title VII: Making It Work", Temple Law Symposium (special issue, 1976).

"The Equal Rights Amendment and The Judiciary", 3 Pepper. L. Rev. 42 (1975).

"War, Genetics and The Law", co-authored with Fr. Raymond Decker, 1 Ecology L.Q. 795 (1972).

Essays

On penology, 1 Kentucky Commentator (1969).

On Harris v. McRae, 448 U.S. 297 (1980), and the right of abortion choice of poor women, 6 Women's Rts. L. Rptr. 166 (Spring 1980).

On prosecutorial discovery, 59 Calif.L.Rev. 225 (Jan. 1971).

On radical argumentation in the U.S. Supreme Court, with publication of brief amici curiae in Bowers v. Hardwick, 14 N.Y.U. Rev. Law & Soc.Change 949 (1986)

Book Reviews

K. Bourdonnay et al., Fighting Back: Lesbian and Gay Draft, Military, and Veterans Issues, 2 Berk. Womens Law Jour. 241 (1986).

R. Lee, A Lawyer Looks At The Equal Rights Amendment, A.B.A. Jour. (July 1981).

J.R.Pole, The Pursuit of Equality In American History, A.B.A. Jour. (August 1979).

B. Brown et al., eds., Women's Rights And The Law, 3 Women's Rts.L. Rptr. (1978).

K. Davidson et al., eds., Sex-Based Discrimination, 27 Jour. Legal Ed. 120 (1975).

B. Weisberg, ed., Ecocide in Indochina, 1 Ecology L.Q. 672 (1971).

LITERARY WRITING

Poetry and criticism published in: Alkahest, American Poems, Anthem, Berkeley Street Poems, Crystalline Flight, Hyperion, People's Park and Voyages. Second prize, for "Guide" (a poem about elephant hunting) in Emily Chamberlin Cook poetry contest, University of California, Berkeley (1968).

POLITICAL PARTICIPATION/SERVICE ACTIVITIES

Co-operating attorney, Center for Constitutional Rights, New York (1977-present).

Member, board of directors, Bay Area Lawyers for Individual Freedom, and co-chair, Gay/Lesbian Family Committee of BALIF, San Francisco (1986-).

Member, board of advisors, Lesbian Rights Project, San Francisco (1978-present).

Member, board of directors, San Francisco AIDS Foundation (1982-1984).

Member, board of directors, San Francisco Arts & Athletics Inc. (1983-present).

Honorary co-chair, Pat Norman for Supervisor campaign (1984).

Co-chair, National March for Lesbian & Gay Rights, San Francisco National Democratic Convention (1984).

Member, Employment Committee, Human Rights Commission of City and County of San Francisco (1980-1981).

Member, Committee on Occupational Classification and Analysis, National Academy of Sciences (1978-1981).

Co-convenor, First Forum on Lesbian/Gay Rights, University of Texas at Austin, School of Law (1979).

Member, board of directors, American Civil Liberties Union of Northern California (1978).

Member, National Lawyers Guild (1978, 1981-present).

Member, first board of governors, California Women Lawyers (1975).

Member and officer, Queen's Bench, San Francisco (1974).

Member, Commission of The State Bar of California To Study Culture Bias In The California Bar Examination (1973-1975).

Member, Committee of The State Bar On Law Students (1973-1975).

Member and speaker, Common Cause (1972-1973).

CASEWORK/OF COUNSEL WORK

Since 1973, the emphasis of my active law practice has been upon litigation of civil rights causes in behalf of women, gay men and lesbians, people of color and disabled people, in cases involving issues of mistreatment and discrimination in employment, public accommodations, immigration, education, athletics, insurance and government benefits, free speech and free association.

I am currently of counsel to Equal Rights Advocates Inc., a cooperating attorney for the Center for Constitutional Rights, a member of BALIF's attorney panel for people with AIDS, and I consult freely with attorneys, clients and others working in the areas set forth above. I have served in an of counsel capacity to attorneys and others working for MALDEF, Asian Law Caucus, Public Advocates, the Legal Defense Fund and comparable public interest law organizations.

AMICUS CURIAE WORK

I have written amicus briefs on behalf of organizations such as those listed above, in several cases, including Webster v. Doe (case currently pending in U.S. Supreme Court concerning whether gay persons can be denied employment with CIA), Bowers v. Hardwick (U.S. Supreme Court case concerning whether a state statute that criminalizes "sodomy" violates federal constitutional right to privacy), published in 14 N.Y.U. Rev.Law & Soc. Change 949 (1986); Newlander v. Newlander (test case concerning statutes of limitation for incest survivors' tort suits); Davis Citizens for Human Rights v. Superior Court (California Supreme Court granted writ to enable Davis voters to entertain gay/lesbian rights ordinance); People v. Hartway (California Supreme Court rejected petition for rehearing to reconsider ruling that permits arrests of prostitutes and not of customers); Illinois Bell Telephone Co. v. Illinois Fair Employment Practices Commission (state court upheld rights of pregnant workers to disability insurance benefits); Drew Municipal School District v. Andrews (U.S. Supreme Court dismissed certiorari as improvidently granted after hearing argument in case involving rights of Black female school employees who were single parents not to lose their jobs).

DEBATES

Opponent: Phyllis N. Schlafly
Place: American Bar Association Annual Convention, Chicago, Illinois.
Subject: The Equal Rights Amendment, Yes or No.
Date: 1977.

Opponent: Phyllis N. Schlafly
Place: Mills College, Oakland, California.
Subject: The Equal Rights Amendment, Yes or No.
Date: 1976.

SPEECHES & LECTURES

I have been speaking and lecturing widely since 1972 on the subjects of gay/lesbian rights, the proposed Equal Rights Amendment to the U.S. Constitution, abortion choice, the rights of sexual minorities, employment discrimination law, the First Amendment and related public interest matters. In 1973-1974, I testified in favor of ratification of the Equal Rights Amendment before the Judiciary Committees of the Assembly and Senate of the California Legislature, the Clark County delegation to the Nevada Legislature, and the Washington Legislature.

1984:

January 5, 1984: Panelist, "Gay Rights and *Baker v. Wade*", American Association of Law Schools annual convention, San Francisco CA.

January 6, 1984: Co-presenter, Teaching award to Herma Hill Kay, Society of American Law Teachers, San Francisco CA.

January 21, 1984: Participant, Conference on settlement of civil actions, U.S. District Court for the Northern District of California, San Francisco CA.

February 4, 1984: Panelist, "Constitutional Litigation In Behalf of Lesbians and Gay Men", BALIF annual conference, San Francisco CA.

March 10, 1984: Speaker, "Employment Discrimination Litigation" and "Civil Rights Attorneys Fees Awards", State Bar of Texas conference on women and law, Austin TX.

March 24, 1984: Speaker, "The Rights of Gay People", University of Pennsylvania annual public interest law conference, Philadelphia PA.

March 30-April 1, 1984: Speaker, "Discrimination and The Rights of Lesbians" and "The Right To Privacy", 15th annual national conference on women and the law, Los Angeles CA.

May 3, 1984: Speaker and mock trial counsel, "Sexual Harassment Litigation", annual labor law conference, Seattle WA.

May 12, 1984: Commencement speaker, New College of California, School of Law.

May 18, 1984: Teacher, seminar in sex discrimination litigation for plaintiffs, sponsored by Cronin Fried Sekiya & Kekina, Honolulu HI.

SPEECHES & LECTURES (continued)

1984:

July 15, 1984: Speaker and co-chair, National March for Lesbian & Gay Rights, San Francisco CA.

July 16, 1984: Speaker, Vote Peace '84 Rally, San Francisco CA.

September 22, 1984: Keynote speaker, National Lawyers Guild alternative law day, "Loving the Guild", Golden Gate University, School of Law, San Francisco CA.

October 19, 1984: Co-lecturer, "Feminist Discourse, Moral Values and the Law: In Theory and Practice", James McCormack Mitchell annual lecture series, SUNY Buffalo, NY (to be published in Buffalo Law Review).

October 22, 1984: Speaker, "Lesbians in Law and Other Endangered Species", CUNY Law School, Queens College, Bayside NY.

November 8, 1984: Lecturer, "Discrimination: Law & Politics", lecture organized by feminist/gay-lesbian/Black/Hispanic law students at UC Davis Law School, Davis CA.

December 14, 1984: Panelist, "Sexual Minorities in Law School and in Law", Society of American Law Teachers annual meeting, New York NY.

1985:

February 2, 1985: Keynote speaker, "Mad About Rowland v. Mad River", BALIF annual conference, Golden Gate University, School of Law, San Francisco CA.

February 2, 1985: Keynote speaker, "Staying OUT", Dignity annual dinner meeting, San Francisco CA.

February 18, 1985: Lecturer, "Why Feminist Jurisprudence?", a lecture series for Berkeley Women's Law Journal staff, Boalt Hall, Berkeley CA.

March 22-24, 1985: Speaker on "Lesbian Rights" and "Women and the U.S. Constitution", 16th annual national conference on women and the law, New York NY.

April 28, 1985: Co-presentor, Berkeley Women's Law Journal Award for Advocacy in Behalf of Social Justice for Women, to Herma Hill Kay, Boalt Hall, Berkeley CA.

SPEECHES & LECTURES (continued)

1985:

June 15, 1985: Speaker, "Underpinnings of Homophobia", symposium on lesbian/gay rights, Hastings College of Law, San Francisco

July 23, 1985: Guest, "Donahue" (NBC), on "Trial and Eros", by A. Spake, Mother Jones (June 1985), New York NY.

September 7, 1985: Keynote speaker, "A Tribute To Barbara Deming: We Are All Part of One Another", National Lawyers Guild alternative law day, Golden Gate University, School of Law, San Francisco CA.

October 16, 1985: Lecturer, "The Legal Status of Sexual Minorities", Institute for Advanced Study of Human Sexuality, San Francisco CA.

1986:

February 22, 1986: Speaker, "Sex, Sexuality and Politics", New York University Forum for Law and Social Change, New York NY.

March 8, 1986: Keynote Speaker, University of California Davis Law School Women's Association, Jobs Conference.

April 5, 1986: Panelist, Lesbian/Gay Rights Conference, Brooklyn Law School, New York.

April 7, 1986: Speaker, "Bowers v. Hardwick and Constitutional Privacy", SUNY Buffalo Law School, New York.

April 12 & 14, 1986: Lecturer, Sex, Sexuality and Individual Privacy, University of Texas Law School, Austin, Texas.

October 28, 1986: Lecturer, "Procedural Problems in Section 1983 Litigation", PLI Annual Program, San Francisco CA.

November 21, 1986: Speaker, "Being a Lesbian at UC Berkeley, 1965-1972", Multicultural Lesbian/Gay Studies Program, Berkeley, CA.

1987:

February 3, 1987: Speaker, Planning session for the National March for Lesbian & Gay Rights (October 12, 1987), San Francisco CA.

February 7, 1987: Panelist, "Human Rights and Discrimination Law", BALIF Student Conference, USF Law School, San Francisco CA.

March 21 & 22, 1987: Workshop leader, "Lesbian Rights" and "The Right To Privacy", 18th National Annual Conference on Women & The Law, George Washington University, Washington D.C.

October 8, 1987: Speaker, founding meeting of lesbian/gay Bar Association, ABA Center, Chicago ILL.

October 9, 1987: Speaker, National Association of Public Interest Law, Georgetown Law Center, Washington D.C.

HONORS & AWARDS

1986: "Woman of the Year", SF Sentinel (gay community newspaper).

1984: Honoree, for public legal services, Bar Association of San Francisco.

1983: Honoree, Alice B. Toklas Lesbian/Gay Democratic Club, San Francisco CA.
"Woman of the Year", International David Society, San Francisco CA.

1982: Recipient, "Harvey Milk Community Service Award", San Francisco Gay/Lesbian Community Cable Car Awards.

1983-1985: Recipient, certificates of honor from Mayor and Board of Supervisors of the City and County of San Francisco, for immigration law work.

Senator **Thurmond**. Ms. Dunlap, in this résumé it also states that you are a co-convenor of the First Forum on Lesbian and Gay Rights at the University of Texas at Austin School of Law in 1979. Is that true?

Ms. **Dunlap**. Yes, Senator. We had three people in the audience on that occasion and one of them was wearing a paper bag over his head. It was quite a time. It was not a very safe place for people to be openly gay and lesbian, I assure you.

Senator **Thurmond**. Ms. Ginzberg, now I would like to ask you a few questions. Ms. Ginzberg, do you personally know Mr. Walker? And if so, to what extent are you familiar with his qualifications and experience for the position which he has been nominated.

Ms. **Ginzberg**. I do not know Mr. Walker personally. This is the first time, as far as I know, we have been in the same room.

Senator **Thurmond**. Ms. Ginzberg, one of the reasons for your opposition to Mr. Walker's nomination is due to his membership in the Olympic Club; is that true?

Ms. **Ginzberg**. That is correct.

Senator **Thurmond**. It is my understanding that the club does have black members, and Mr. Walker has urged the inclusion of minorities and women into the club. Did you know that?

Ms. **Ginzberg**. What I know is that in response to the lawsuit filed by the city attorney——

Senator **Thurmond**. If you do not mind, answer and then explain it. Just answer it.

Ms. **Ginzberg**. The answer is, I learned that they have admitted black members as a result of having been sued by the city attorney. That is what I know. And that women do not have full voting privileges.

Senator **Thurmond**. In fact, in a recent club meeting he voted to admit women to voting membership in the club, did he not?

Ms. **Ginzberg**. As far as I know he stated something to that effect in his application.

Senator **Thurmond**. Mr. A. James Robertson, who is a member of the Olympic Club, in a letter to the committee stated this, and I quote, "It is simply untrue that Mr. Walker has been insensitive to the absence of minorities in the club. Over a long period of time Mr. Walker has been emphatic in expressing his view that the club should welcome members without regard to race. While it is regrettable that the Olympic Club has not included as members persons of all races until fairly recently, the changes which recently have been made in the club's membership practices are in large measure the product of support by persons such as Mr. Walker."

Ms. Ginzberg, would you care to comment on this, on that matter?

Ms. **Ginzberg**. That letter is something that I saw just when I walked in here today. I had not seen it before. What I would say is that, while one can appreciate the efforts that are made from members in a club that ultimately discriminates, that the bottom line is that there are rules of judicial conduct, there are ABA proposals about this. It is considered beyond the pale for a member of the bench to belong to a club that continues to invidiously discriminate.

All I can tell you is that I do not consider it sufficient that somebody advocate for the admission of women. I believe that the continued membership by Mr. Walker in this club disqualifies him actually from assuming—should disqualify him from assuming judicial office in the northern district.

Senator **Thurmond**. Mr. Walker has voted for them to become voting members, did he?

Ms. **Ginzberg**. I did not hear what you just said.

Senator **Thurmond**. Ms. Ginzberg, did you know that?

Ms. **Ginzberg**. I did not hear what you just said. You just made a comment directed to me. I cannot hear it.

Senator **Leahy**. She could not understand the question.

Ms. **Ginzberg**. I did not hear your last comment is what I said.

Senator **Thurmond**. Mr. Walker voted for them to become members, did he not?

Ms. **Ginzberg**. I understand that. And I am simply saying that we do not consider that to be adequate when the club continues a policy and when they are spending thousands of dollars to defend that policy. I do not consider that the vote in favor of opening that club up, when this club is actively litigating its right to continue to discriminate, and will probably spend $1 million before they are done defending that right, to be adequate.

We speak with our actions as well as with our words. And I consider his action to be now—has to be construed to be in support of the club, which in turn has a policy of discrimination. As a woman who could never become a voting member of this club, that discrimination affects me and affects all other female litigators and litigants in the northern district.

So I do not consider the fact that he voted to admit women to be adequate when that club is continuing to expend significant resources, including his membership dues, I am sure, to defend their right to discriminate. That does not reassure me.

Senator **Thurmond**. Ms. Ginzberg, you were co-author of the May 25, 1988 article which I referred to earlier, were you not?

Ms. **Ginzberg**. That is correct.

Senator **Thurmond**. The article makes reference to Mr. Walker's "apparent personal bias against women." I wonder, however, if you are personally aware of any incidences of bias towards women by Mr. Walker.

Ms. **Ginzberg**. I am not, except what can be construed by membership in a club which discriminates against women. But I have not personally either experienced or directly heard of an individual act of personal bias.

Senator **Thurmond**. Are you a member of any lesbian organizations?

Ms. **Dunlap**. I want to object to the question. May I do that?

Senator **Leahy**. We will all be in order for a moment. One, I fail to see the relevance of this. The witnesses have put in—if we want to go, and if the distinguished——

Senator **Thurmond**. She does not have to answer, Mr. Chairman.

Senator **Leahy**. I will just finish what I am saying. If the distinguished Senator from South Carolina is hoping by some indirect way to ask each person who testifies here today what their sexual preferences might be, I would note two things. One, it is totally and completely irrelevant, and such a question will not be allowed by the chairman of this hearing. And secondly, if it were to be allowed, it would be asked of each and every person who has testified here today, and we are not about to do that either.

Senator **THURMOND**. Since she was a co-author of this article with Ms. Dunlap, who has admitted that she is a member of various lesbian organizations, I thought it would be appropriate to ask her if she was also a member of these organizations.

Ms. **DUNLAP**. Senator Thurmond, let me clear something up. If I would be permitted——

Senator **LEAHY**. I recall the distinguished predecessor of mine from the State of Vermont finally had the courage, when virtually no one else in the U.S. Senate did, to stand up in the 1950's and talk about these kinds of questions, only there referring to political affiliations. Senator Ralph Flanders of Vermont had the courage to do it, and I applaud what he did. And I am not about to have another form of McCarthyism creep into the Senate Judiciary Committee on days when I am entrusted with the chairing of a committee hearing.

It does the nominee no good. And I am not suggesting that he was the one proposing these questions. But it does not do anyone any good. But especially it does not bring credit on the U.S. Senate.

Senator **THURMOND**. Mr. Anthony, an article was written headed, Walker Blasted By Gay Groups. In this article it says, T.J. Anthony of the Feminist Men's Alliance. Are you the same Anthony?

Mr. **ANTHONY**. That is right, Senator.

Senator **THURMOND**. In view of the chairman's ruling, I shall not ask any further questions.

Senator **LEAHY**. There is nothing inappropriate——

Senator **THURMOND**. I think the situation is res ipsa loquitur, which in Latin means, it speaks for itself.

Senator **LEAHY**. I think if any Senator wishes to ask a witness about statements they have made about this nominee, or statements they have written about the nominee, that is perfectly appropriate—for or against him. I do not think anybody would object to that. I think the Senator from South Carolina knows precisely, however, what I was referring to.

Mr. **ANTHONY**. Senator, may I make one comment. The Feminist Men's Alliance is a network of 200 men, 70 percent of whom are straight males. And I also want to reassure the Senator, I am not a member of the Communist Party.

Senator **LEAHY**. Are there any further questions?

Senator **THURMOND**. Nothing further at this time, Mr. Chairman.

Senator **LEAHY**. If the Senator would like another hearing, we will schedule another hearing. In the meantime, I would ask——

Senator **THURMOND**. That is merely an excuse to put it off. I say vote on it at the next business meeting.

Senator **LEAHY**. In the meantime, each witness will get a copy of their testimony, and if they have anything further to add to it, feel free. We will stand in recess.

[Further submissions from members of the panel follow:]

Rec'd 7/29/88 ssm

Mary C. Dunlap
Attorney At Law
1599 Dolores Street
San Francisco, CA 94110
(415) 282-6555

July 28, 1988

TO: Senator Patrick Leahy, Chair
Senate Committee on the Judiciary
Washington D.C. 20510-6275
c/o: Steven J. Metalitz, Chief Nominations Counsel

RE: Nomination of Vaughn R. Walker
to United States District Court,
Northern District of California

Dear Senator Leahy and Mr. Metalitz,

Greetings. Enclosed please find my supplementary testimony in the matter of the Vaughn R. Walker nomination. I assume that you will provide copies of this material to the members of the Committee. If there is any other inquiry to be answered, or any other material that I can helpfully provide, please contact me.

I offer my personal and heartfelt thanks to yourselves and the Committee for the opportunity (painful though it was and continues to be) that I have been afforded to be heard on this extremely vital question. I am very grateful for the courtesy and protection shown to me in the course of my serving as a witness to the Committee. Thank you kindly.

I understand and believe that materials will be forwarded to the Committee, relevant to this nomination, by Ms. Judith Baer, attorney for the estate of the late Dr. Tom Waddell, and by Dick Schaap, of ABC News and 20/20, in the latter instance concerning the fact that Mr. Schaap was told by USOC representatives in March or April 1987 that the liens had been or would shortly be removed from Tom Waddell's property, during a time when USOC representatives knew that Mr. Schaap and others were reporting on a national news basis on the status of this matter of the liens. I hope that the materials that Ms. Baer and Mr. Schaap will be sending will be useful to the Committee.

Thank you again,
Best regards,

Mary C. Dunlap
MARY C. DUNLAP

SUPPLEMENTARY TESTIMONY OF MARY C. DUNLAP IN OPPOSITION TO NOMINATION OF VAUGHN R. WALKER

I. INTRODUCTION

I take this opportunity to supplement the testimony provided by me to the Committee of the United States Senate on the Judiciary on June 13, 1988. A number of matters have come into sharper focus from the testimony taken on that date, and from written submissions provided since the hearing, and I have summarized them below. A number of new matters were raised at that time, particularly by the testimony of Mr. Ephraim Margolin, and I have responded to these matters below, as well.

II. REMOVAL OF THE LIENS IN THE "GAY OLYMPICS" CASE: A CASE OF CONTRADICTORY AND UNTRUTHFUL STATEMENTS BY MR. WALKER

A. The Legal and Practical Necessity of Securing Mr. Walker's Agreement to Remove the Liens

It is quite clear by now, as I testified on June 13, that the liens could not be removed by unilateral action of Ms. Baer and/or myself as Dr. Waddell's attorneys. (See letter of Professor Pierre R. Loiseaux to George Kassouf, 7/5/88) Much as Ms. Baer and I might have wished, we were obliged to secure Mr. Walker's agreement to remove the liens, and to have his signature on a recordable document to that effect.

For the reasons presented previously and below, I am also convinced that we were obliged to seek Mr. Walker's agreement to the removal of the liens, even if we had gone back to District Court and sought an order removing the liens, because Judge Vukasin would not have made any such order over Mr. Walker's opposition. Judge Vukasin had shown a deep, consistent antipathy toward my clients and would not, in my carefully developed professional opinion, have done anything with which Mr. Walker disagreed. (There was even a risk, which I considered in 1986 and 1987 in my determination not to make a motion without Walker's agreement or stipulation, that Judge Vukasin would have left the security in place or taken further action against Dr. Waddell, even if Mr. Walker had agreed to release the liens. Judge Vukasin is a demonstrably homophobic person, who I am firmly persuaded wanted to hurt my clients. This statement is based on all the material I have already provided to the Committee about Judge Vukasin, as well as on an account by an Oakland attorney who appeared before Judge Vukasin in the early 1980's and whose client was referred to by Judge Vukasin in chambers as "a faggot", in an effort by Judge Vukasin to force the attorney to settle for less than he sought for that client's injuries.) Because of Judge Vukasin's consistent and demonstrated inhospitality to any claims, defenses or assertions of my clients, SFA&A and Dr. Waddell, I believe that we were effectively obliged to secure Mr. Walker's agreement even if we had gone back into District Court in advance of the U.S. Supreme Court's ruling (on June 25, 1987) and had sought a District Court order removing the liens.

In my view, Mr. Walker's lack of support for removal of the liens would have guaranteed that Judge Vukasin would have denied such a motion. Judge Vukasin had made himself totally clear in his determination to make my clients pay whatever, however and whenever USOC and its attorney, Mr. Walker, asked, regardless. If Mr. Walker had gone into court before Judge Vukasin and if he had asserted to Judge Vukasin in 1987, as he told this Committee on June 13, 1988, that "...the position of [USOC]..[is] that upon completion of the case in the U.S. Supreme Court, if it turned out favorable to USOC...[is] that they fully intend...to go forward and to pursue an award of attorneys fees...And I [am] not at liberty to do anything which might in any way jeopardize that position later, or suggest that [is] not what the [USOC] wishes... to do." (V. Walker testimony to SJC, pp. 64-65 (6/13/88)), I am positive that Judge Vukasin would have been persuaded that USOC had a continuing interest in keeping the liens in place (whatever the law, facts or equities required). In sum, because Mr. Walker continued to assert, even on June 13, 1988, that it was his client's position that the liens were necessary to secure the possible future judgment for fees, there certainly would have been no percentage to myself as attorney for SFA&A and Dr. Waddell to go before Judge Vukasin in the hope, based on the Kester letter, that USOC would not oppose my motion. (After all, all Mr. Walker would have needed to assert to Judge Vukasin was that Kester's representation that he did not "anticipate [USOC] would oppose" a motion to remove the liens was unauthorized; both Mr. Walker and Mr. Kester had told me that Mr. Walker continued as USOC's trial counsel in California, and the matter would obviously have been within Mr. Walker's, and not Mr. Kester's, authority.)

Mr. Walker told this Committee that as of spring/summer 1987, he was committed and prepared to continue to oppose the removal of the liens, because his clients required this (despite the Helmick letter to Ueberroth stating an absolutely contrary position), and that that he was not free to do anything to "suggest that that was not what the committee wished to do." (V. Walker testimony, p. 65). As I had surmised in 1987, and as I told this Committee in my letter of April 7, 1988 (para. 4, p. 6) the testimony of Mr. Walker about the real purpose of the liens (to wit., to coerce SFA&A to raise money to pay attorneys fees to USOC)(V. Walker testimony, pp. 65-66) admits that the purpose of the liens was to force my clients to come up with money to pay thousands of dollars of attorneys fees, with Tom Waddell's house hanging in the balance if they failed to do so. Mr. Walker's testimony to this Committee makes plain that as of spring/summer 1987, Mr. Walker was prepared to fight in court to keep the liens in practical effect.

Mr. Walker's apparent determination to preserve the liens, despite their lack of legal basis (see Loiseaux letter, regarding CCP section 697.050, at p. 2), made the prospect of asking Judge Vukasin for relief not simply futile, but dangerous. If Judge Vukasin had not shown an unexceptionably perfect disposition to give Mr. Walker anything he asked, the chance of going back into court despite Mr. Walker's opposition might have been worth taking. But the severe risk to my clients, and to Dr. Waddell in particular, given Judge Vukasin's disposition to provide Mr. Walker with whatever he sought, was that if I made such a motion, Judge Vukasin might not simply refuse to remove the liens, but might rush to issue another judgment on fees and might even permit execution on Tom's property (a fate that was narrowly averted by me in 1984, when I opposed the debtor's examination of Dr. Waddell and secured an unprecedented stay of execution without bond from the 9th Circuit, based chiefly on my assertion that the attorneys fees award was too unorthodox and unprecedented to permit execution to occur before appeal--- Mr. Walker was seeking to execute on Dr. Waddell's property at that time, and showed no willingness to back off, obliging me to seek an emergency stay; I saw no reason to believe in 1987 that Mr. Walker would not try this tactic again.) The probability that Judge Vukasin would accept Mr. Walker's position on the liens (see above) and would leave them in place made it all the more necessary for Ms. Baer and myself to continue to seek Mr. Walker's agreement to remove the liens short of going back into court. Otherwise, Judge Vukasin, at Mr. Walker's behest, might well have done further injudicious actions that would hurt my dying client.

Nor was my fear unwarranted that Mr. Walker might use the opportunity of a motion to remove liens to tie up Tom's property further, or otherwise to intimidate him. As this Committee has been told forthrightly by Mr. Walker, Mr. Walker "would not do anything differently today" as to the liens (V. Walker testimony, p. 68), and Mr. Walker sees nothing wrong in leaving the liens on the property of a dying man, since the purpose of the liens would be served---to induce SFA&A to raise money to pay USOC. This is reinforced by Mr. Walker's testimony that, as far as he was concerned, it was his clients' intention and position to continue to pursue fees. "...[USOC] intended at all times to pursue the matter of attorneys' fees." (V. Walker testimony, p. 79). Indeed, Mr. Walker and his clients certainly did so, filing a motion for $280,000. in fees in October 1987. When the witness Mr. Ephraim Margolin testified that USOC chose not to go back in and pursue fees, and "did not reinstitute the case for attorneys fees" and the issue of attorneys fees "kind of died a natural death", Mr. Margolin could not be more sorely mistaken. Mr. Walker fought for attorneys fees to the very end of this case, withdrawing the final motion for fees only after I filed declarations and a memo in which I believe I succeeded in demonstrating the utter legal groundlessness and factual falsity of USOC's last motion for fees.

Any premise that I should have risked Mr. Walker's possibly opposing a motion to remove the liens, under the circumstances discussed above, and that I should have gone to Judge Vukasin and sought removal of the liens at whatever risk that Mr. Walker's opposition might run for my clients, is undermined by the reality that Mr. Walker continues (apparently to date) to take the position that he was under an instruction not to do anything (including allow removal of the liens) to jeopardize the possibility of fee recovery to his clients, because his clients intended to seek fees at all times in the litigation, and that the liens served the purpose of being "the effective way that the corporation [SFA&A]...would raise the money to pay off the attorneys' fees award." (V. Walker testimony, pp. 65-66)

B. Other Apparent Contradictions and Misstatements By Vaughn Walker Relative to the Matter of the "Gay Olympics" Case

This Committee should not be confused about who represented the USOC during the relevant period of the liens. If Mr. Walker did not represent USOC then, how can he assert attorney/client privilege as to communications about the liens? (V. Walker testimony to SJC, p. 75.) It is plain that Mr. Walker had an ongoing role as an attorney in this case, throughout its pendency, including during the Supreme Court proceedings. Mr. Walker told me in December 1986 that he remained counsel of record, and to serve briefs upon him. (Letter to Walker from Dunlap, 12/2/86). Mr. Walker was involved in research and advice on the liens provided to Mr. John Kester, Washington D.C., in spring 1987, and Mr. Walker dealt directly with Judith Baer about the liens from at least April 1987 to July 1987. The effort to create doubt as to Mr. Walker's direct and continuing role, particularly on the question of the liens, appears extremely disingenuous. Ephraim Margolin's testimony that Vaughn Walker was "a man who was told how the client wanted the case to proceed and then was replaced towards the end" (E. Margolin testimony, p. 98) rings very hollow against these undisputed facts. The transparent effort to shed responsibility from Mr. Walker as to the actions and statements concerning the liens should be seen as an unfounded dodge of accountability by Mr. Walker, under these facts.

C. Conclusion: Mr. Walker's Statements and Actions As to The Liens Are Irreconcilable With Minimal Standards for Federal Judicial Qualifications

The position that Mr. Walker has taken to this Committee about the liens is fundamentally contradictory, in law as well as in fact. He has repeatedly asserted that the liens were extinguished as a matter of law (V. Walker testimony, pp. 56-58. 73); yet he has also repeatedly assserted that he was not free to sign a document establishing this legal truth that would be recordable, and he knows full well that the liens remained in effect, clouding Dr. Waddell's title, until July 17, 1987, when he finally signed a document which could be recorded to remove them.

(V. Walker testimony, pp. 64-66) He has told this Committee, as he and other representatives of USOC told the world through the media in spring/summer 1987, that USOC had no intention of harassing Tom Waddell, whom Mr. Walker knew to be dying of AIDS as of at least early 1987. (V. Walker testimony, p. 61). During this period, USOC and its attorneys told media people that the liens had been removed when at least Mr. Walker knew fully well, from the numerous calls and letters from Ms. Baer and myself, and from his own inaction, that the liens had not been removed. Yet, during this time when the world was being told that the liens had been released, Mr. Walker claims to have been bound by an instruction of his clients to do nothing to remove the liens. (V. Walker testimony, p. 65) For a period from early 1986 through July 17, 1987, Mr. Walker continuously refused to sign a document removing the liens that were tormenting Tom Waddell, and which both Judy Baer and I told Mr. Walker were tormenting Tom Waddell. Only upon Tom's death did Mr. Walker finally sign the document. Perhaps this signature, which did not come in time to give Tom relief, came from Mr. Walker's realization that the world was still watching and might find out that it had been lied to about the liens. (See articles in Sports Illustrated 7/87 and New Yorker 8/87 regarding Tom Waddell, USOC and, inter alia, the liens which, by the time of these publications, were actually removed).

Mr. Walker's explanations of his treatment of Tom Waddell are implausible, contradictory and internally inconsistent among themselves, not to mention the inconsistencies with his clients' statements to the media (eg. Mr. Walker claims he was under an instruction to preserve the liens at a time when his clients were stating, in writing as well as orally, that the liens had been released and that they had no intention of pursuing Dr. Waddell's property further.) The course of action of Mr. Walker, in leaving the liens in place and refusing for a year and a half (including a period of at least six (6) months in which he knew Dr. Waddell to be dying of AIDS) to sign a document removing the liens, while simultaneously telling the media that the liens were removed (because it looked so horrible for USOC and its attorneys to be pursuing them), and in representing to this Committee in writing that Dr. Waddell's attorneys had been responsible for removing the liens when he knew we were not legally empowered to do so, and in representing that we could have removed the liens in law and fact when he knew we could not do so without his agreement, and in representing that we had failed to take proper actions to do so (when Mr. Walker knew full well of the calls, letters and other efforts we had made to secure his co-operation and agreement to remove the liens) show a cavalier disregard for truth, a gross lack of compassion, a dubious set of ethics and a fundamental lack of reasonableness when confronted with his own contradictory positions. These capacities are the polar opposites of what a federal judge should possess. To Senator Leahy's question, "Have you exhibited the balanced and reasonable temperament that a potential judge should have? Has the nominee allowed zeal for the cause to overcome commonsense or a sense of compassion?" (Hearing transcript, p. 50), the statements and actions of Vaughn R. Walker in the matter of the liens on Tom Waddell's residential property establish answers that cannot possibly be reconciled with finding Mr. Walker to be even minimally qualified to serve as a judge.

III. THE TESTIMONY OF EPHRAIM MARGOLIN

Ephraim Margolin, a witness who testified orally in Mr. Walker's behalf, was mistaken about a number of important matters, and he appears to have been less than totally honest about at least one matter. Mr. Margolin's testimony that USOC did not pursue attorneys fees after the Supreme Court ruled is clearly wrong. (E. Margolin testimony, pp. 113-114.) Mr. Margolin's testimony that Mr. Walker was replaced at the end of the case also is clearly wrong. (E. Margolin testimony, pp. 98, 112). Mr. Margolin also testified that he has "known Vaughn Walker much longer" than he has known myself (E. Margolin testimony, p. 116). He testified that he has known Vaughn Walker for "well over 12 years". (E. Margolin testimony, p. 95) Mr. Margolin has known me since 1977, when I was elected to serve and began service on the Board of Directors of the ACLU of Northern California, on which Board Mr. Margolin then served as well. We met personally on a number of occasions in 1978. That was 11-12 years ago, as I calculate. I mention this perhaps minor-seeming discrepancy in testimony, because I believe it matters that the Committee recognized that Mr. Margolin overstated matters in his testimony.

The most serious misstatement or overstatement in Mr. Margolin's testimony, in my view, is his version of what transpired when my client, Tom Waddell, and Tom's friend, Zohn Artman, went to see Mr. Margolin during the appeal in the "Gay Olympics" case. (E. Margolin testimony, pp. 96, 111). I have second-hand knowledge of this meeting, because Tom called me after this meeting and gave me a lengthy account of it. (Tom and Zohn are both dead of AIDS now, and thus are not available to corroborate or contradict Mr. Margolin's version of their conversation.) I remember clearly what Tom told me about the meeting. He told me that Mr. Margolin owed his friend Zohn a favor, and that he and Zohn went to Mr. Margolin to see what resources Mr. Margolin might volunteer in the litigation, to help the ACLU and myself with the case. (ACLU Southern California and I were sole counsel on it, throughout its 6-plus years in the federal courts.) Tom said that he and Zohn asked Mr. Margolin to help, and Tom told me that Mr. Margolin responded that he would require a $25,000. retainer. Tom said that he and Zohn then urged Mr. Margolin to provide some service for free, and he offered (or they suggested) an amicus brief. An amicus brief was ultimately prepared by Sandra Coliver, of Mr. Margolin's office; I collaborated with her in this matter, and I do not believe Mr.

Margolin actually worked on it. Neither Tom nor Zohn, nor anyone else close to them, ever told me that Tom and Zohn sought to have Mr. Margolin take over the case or substitute for me, and I do not believe it ever happened. I was informed by Tom and a number of other persons close to him, throughout the case, that he was totally satisfied with my services in the case. While the question of what Tom and Zohn asked Mr. Margolin to do is not directly relevant in this matter, it does subtly implicate my reputation and services in the "Gay Olympics" case, and I believe that Mr. Margolin's assertion that my clients sought to fire me may have been offered for that purpose. Because Mr. Margolin also broadly hinted that I had committed malpractice in the manner in which I had sought to remove the liens in the case (E. Margolin testimony, p. 115-116), possibly responding to an accusation of malpractice framed in a question by Senator Heflin to Mr. Walker (Trans. p. 71), and because I believe there is not the slightest hint of any malpractice in any part of my conduct of the case, including my handling of the lien controversy, I submit that it may not have been beyond Mr. Margolin's plans to damn me with a threat of termination of my services, when any such termination certainly never occurred, based on the alleged statements of two people who are no longer here to tell their versions of the discussion.

IV. THE MATTER OF MY SEXUAL IDENTITY AND POLITICAL AFFILIATIONS

Senator Thurmond's unrelenting line of questions about my affiliations with gay/lesbian rights groups (Trans. pp. 171-179) were designed, I suppose, to suggest that I am a lesbian, and that, because I am a lesbian, I must be biased against Mr. Walker for personal or political reasons. The relevant inference simply does not hold. As I was about to clarify in testimony (Trans. p. 179), I do not hesitate to identify myself as a lesbian, for the reason that I consider it a matter of public record (at least in the community in which I serve, teach and practice law). This is because I have been publicly honest and open about my sexual orientation since 1979, when I was a judicial candidate for the California state court bench (during which period I was rated "well qualified" by both county and state bar committees). I later withdrew my candidacy in favor of continuing public interest law practice.

While I resent the gay-baiting tactic of Senator Thurmond, and do not wish to reinforce that tactic by my open statement here, I strongly believe it does not serve the cause of just and equal treatment of gay persons, to which I have dedicated a part of my legal career, for me to conceal or hide my sexual orientation in these proceedings. I heartily agree with the comments of Senator Leahy concerning this matter (Trans. pp. 179-180), and I take this opportunity to thank Senator Leahy with all my heart for his vigilant protection during the proceedings of the Committee of the right to privacy, the right to freedom of speech and the right to freedom of association, guaranteed by our precious Constitution. I offer this addendum to my testimony on this subject because it is important for this Committee and all members of the U.S. Senate, in all of their deliberations on this nomination, to know that while I am a person of "minority" sexual orientation who is affiliated with the gay/lesbian rights cause, I hold no bias against Mr. Vaughn Walker on either of these bases, and to realize that Senator Thurmond's effort to suggest the contrary is neither fair to me personally nor logically sound.

V. TYPOGRAPHICAL ERRORS

The only typographical errors in the transcript that are of possible significance in understanding my testimony are:

p. 120, line 1 : should read "white and male", not "write and mail";
p. 120, line 14: should read "becoming a judicial candidate", not "the coming judicial candidate";
p. 168, line 14: should read "Ms. Dunlap", not "Ms. Ginzberg".

ABBY GINZBERG
ATTORNEY AT LAW
515 HILL STREET
SAN FRANCISCO, CALIF. 94114
(415) 826-2231

July 27, 1988

Senator Patrick Leahy
Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

Dear Senator Leahy,

I have had an opportunity to review a copy of the transcript of the hearing on the nomination of Vaughn Walker before the Senate Judiciary Committee on June 13, 1988, although I have not yet received an official copy of my own testimony for corrections. Please enter this into the record.

I am troubled by several representations made by Mr. Walker when testifying before the Committee which I would urge the Committee to investigate more fully. Mr. Walker testified that the Olympic Club engaged in "negotiations with another athletic club, a women's athletic club" and that there was "much discussion about how to accomodate both men and women on a full, participating basis in the club." (Transcript, p. 38) Although I have been following the litigation surrounding the Olympic Club's discriminatory policies for some time, this was the first time I had ever heard of such discussions. When I returned to San Francisco I spoke with George Riley, the attorney handling the litigation forthe City Attorney's office, who stated that he had no knowledge of any such negotiations ever having occurred. I would strongly urge the Committee to attempt to independently corroborate Mr. Walker's testimony on this point.

Mr. Walker's testimony about such negotiations was particularly surprising in view of the Olympic Club's ongoing aggressive litigation stance in defense of its exclusionary policy. Following the decision of the U.S. Supreme Court in New York State Clubs Association v. City of New York upholding a New York ordinance which is almost identical to the one at issue in the San Francisco litigation, the Olympic Club has taken no steps towards admitting women as full voting members.

Moreover, in a press release dated June 30, 1988, the Olympic Club publicly stated its intention to defend its current policies:

> "The Olympic Club regrets that after over a century of undisturbed, quiet existence, minding its own private affairs, it finds itself forced to defend the fundamental rights of its members against the strong arm of political oppression." (See addendum A)

This recent statement of Club policy is consistent with the Club's tenacious litigation against the City's effort to bring it into compliance with San Francisco's anti-discrimination law. The Club has just lost two rounds in its efforts to defend its policy. Superior Court Maxine Chesney dismissed the Club's cross-complaints against the city and a Court Commissioner just ruled that the Club could not depose City Attorney, Louise Renne. (See attached articles)

In view of these official positions of the Club, I would urge the Committee to take a close look at Mr. Walker's testimony, in which he paints a rosy, but clearly inaccurate picture of the Club. Mr. Walker testified that "I believe the Olympic Club is a very good example of an organization that is in the process of change, has successfully completed substantial change, and has the promise of future change." (Transcript, p. 41)

Although Mr. Walker testified that he does not believe that the Olympic Club practices invidious discrimination now (Transcript, p. 39) the facts demonstrate otherwise. It is clear from the papers filed in the lawsuit against the City as well as from the press release, that efforts to have the Olympic Club follow the mandate of the US Supreme Court and local laws are considered to be "the strong arm of political oppression."

The concerns I expressed on June 13, 1988 about Mr. Walker's ongoing membership in a discriminatory club have been strengthened by these recent actions of the Club. The Olympic Club is now the symbol of discriminatory policies within the Bay Area. To appoint a current member of this Club to the federal bench demeans the reputation of the judiciary and violates the ABA Code of Judicial Conduct.

Finally, I would urge you to carefully review the written testimony of Judith Baer, who worked as Tom Waddell's probate lawyer. She has identified a number of false statements in Mr. Walker's testimony before the Committee. I believe that they cast considerable additional doubt on Mr. Walker's character for truthfulness. There is still much confusion in the record as to whether Mr. Walker's lack of cooperation concerning the removal of the liens on Mr. Waddell's property was in furtherance of his client's position.

In view of the letter received by Peter Uebberoth stating that the US Olympic Committee had released the lien and had directed their attorneys not to reinstitute the action (Transcript, p. 123), Mr. Walker's delay in executing the releases deserves further investigation by the Committee.

In summary, there is even more reason to be concerned about Mr. Walker's nomination to the federal bench today than there was on June 13, 1988. The additional documentation which has been provided to the Committee by Ms. Baer and Professor Loiseaux supports Ms. Dunlap's testimony about Mr. Walker's actions in the Gay Olympics case. The position taken by the Olympic Club over the last two months contradicts any notion that the Club is 'making substantial progress.' In view of the record against Vaughn Walker, we would urge you to reject his nomination to the federal district court.

If you would like any additional information, please feel free to contact me.

Sincerely,

Abby Ginzberg

Abby Ginzberg

for

BAY AREA LAWYERS FOR
INDIVIDUAL FREEDOM

BLACK WOMEN LAWYERS OF
NORTHERN CALIFORNIA

LA RAZA LAWYERS ASSOC.

LEGAL ADVOCATES FOR WOMEN

NATIONAL LAWYERS GUILD,
SF BAY AREA CHAPTER

NATIONAL ORGANIZATION OF
WOMEN, SF & LA CHAPTERS

SAN FRANCISCO WOMEN LAWYERS
ALLIANCE

THE OLYMPIC CLUB

Addendum A

PRESS RELEASE

The objects and purposes of The Olympic Club have always been to promote physical culture, social intercourse and to foster amateur athletics in a spirit of close harmony and fraternity.

Membership is possible only by

1) invitation pursuant to proposal of Active or Life members who certify that any eligible invitee will advance the harmony, good will, good fellowship, purposes and objectives of the Club, and

2) an affirmative recommendation by the Admissions Committee after a careful confidential investigation of the nominee, and

3) approval by the Board of Directors.

Although the recent U.S. Supreme Court decision specifically affirms the right of private clubs to assert their constitutional rights of privacy, speech, and association on a case by case basis, and while San Francisco has not yet attempted to enforce its new Ordinance, the Board of Directors of The Olympic Club has determined that the ominous threat of potential enforcement is good cause to make certain changes in some aspects of the Club's private affairs.

By implementing these changes, the Board believes that the Club will be exempt from the San Francisco Ordinance and that its 128 year tradition and recognition of privacy will remain.

Consequently, effective August 1, 1988, all transactions at The Olympic Club shall be by member-only chits. Statements for dues and charges must be paid by personal check. Cash and credit card transactions will no longer be authorized.

The Olympic Club regrets that after over a century of undisturbed, quiet existence, minding its own private affairs, it finds itself forced to defend the fundamental rights of its members against the strong arm of political oppression.

BOARD OF DIRECTORS

Donald A. Bering
President

June 30, 1988

San Francisco Chronicle
The Largest Daily Circulation in Northern California
415-777-1111
★★★★★ FRIDAY, JULY 1, 1988

Friday, July 1, 1988

Olympic Club Acts To Escape City's Law Against Bias

By Dawn Garcia
Chronicle Staff Writer

The Olympic Club, one of San Francisco's largest all-male clubs, took steps yesterday to try to exempt itself from a city law banning sex discrimination by private groups.

In a written statement released yesterday, Donald E. Bering, president of the club's board of directors, said the directors have decided that the "ominous threat of potential enforcement is good cause to make certain changes in some aspects of the club's private affairs."

As of August 1, all transactions at the Olympic Club will be by member-only chits, according to the new policy. Statements for dues and charges must be paid by personal check, and members will no longer be able to use cash or credit cards to pay for meals, drinks or any expense incurred at the club.

Some of the city's other large private clubs have recently taken similar steps. At least four clubs say they no longer accept money from nonmembers.

The changes aim at making the clubs strictly private organizations, which are not subject to the city's anti-discrimination law. The law bans sex and race discrimination by organizations with 400 or more members and which accept payments from nonmembers for meals or other club services.

Although there are about a dozen clubs that could be affected by the city ordinance, Olympic Club members expect the city to go after them first.

"The Olympic Club regrets that after over a century of undisturbed, quiet existence, minding its own private affairs, it finds itself forced to defend the fundamental rights of its members against the strong aim of political repression," Bering said.

City Attorney Louise Renne said the club's action will not exempt it from the law.

"Discrimination is discrimination, whether you pay for it by check or credit card," Renne said.

The city filed suit against the club last November, demanding that it immediately admit women and minorities or give up its lease of 17 acres of city-owned land at the Lakeside Country Club golf course.

That suit relies on the state's civil rights act, which makes it illegal for businesses to discriminate against women or minorities. The 4,000-member Olympic Club, the suit contends, is a business, not just a private club.

San Francisco Chronicle
The Largest Daily Circulation in Northern California
★★★★★ THURSDAY, JULY 21, 1988 415-777-1111

Olympic Club Loses Again on Barring Women

By Edward W. Lempinen
Chronicle Staff Writer

The Olympic Club's campaign to keep its doors closed to women was dealt another defeat yesterday in San Francisco Superior Court.

Judge Maxine M. Chesney rejected complaints by Olympic Club attorney Robert F. Kane, who said the city of San Francisco is violating its lease with the club by pressing an anti-discrimination suit.

The ruling allows the city to proceed with legal action demanding that the club, with its 4,000 members, either admit women to its swank premises or give up three holes in its golf course that are on land leased from the city.

Chesney's ruling was the latest in a series of steps taken locally and by the U.S. Supreme Court that could affect the club's all-male membership.

"This is another important victory for the city, and yet another defeat for the Olympic Club," said George Riley, special assistant to City Attorney Louise Renne. "I don't know how much clearer the message has to be."

Neither Kane nor club official Jim Meyers could be reached.

Renne's office filed suit against the Olympic Club last November, charging that the refusal to admit women and ethnic minorities was a violation of state civil rights laws. The city says that the lease can be ended if the club violates any laws.

The city's request for a court order opening the club to women is scheduled to be heard in October.

The club recently admitted its first black members but has resisted attempts to admit women.

In documents filed for yesterday's hearing, Kane argued that the city's suit is in fact a "malicious breach" of the lease because it deprives the club of "quiet enjoyment of possession of the (leased) premises."

Thursday, July 28, 1988 San Francisco Chronicle

BAY AREA REPORT

Olympic Club Loses In Court

■ Lawyers for the all-male Olympic Club were blocked yesterday from forcing City Attorney Louise Renne to answer their questions under oath before the city's discrimination case against the club reaches court.

The ruling by San Francisco Superior Court Commissioner Mervin Friedman was the latest in a series of recent court rulings and political actions against the exclusive 128-year-old club and its 4,000 members.

Renne's office filed suit against the Olympic Club last November, charging that its failure to admit women violates state civil rights law. The case is scheduled to be heard in court in October.

The Olympic Club had asked for the deposition — on videotape and lasting five days — and for her personal diaries.

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

1 August 1988

TO: Honorable Patrick Leahy, Chair
Mr. Steven Metalitz, Chief Nominations Counsel
Senate Committee on The Judiciary, 224 Dirksen
Washington D.C. 20510

Re: Nomination of Vaughn R.
Walker to U.S. District Court
for Northern District of
California

Dear Senator Leahy and Mr. Metalitz,

As promised, enclosed is a letter to myself from Dick Schaap, reporter for ABC News, concerning what he was told regarding the lien on Tom Waddell's residence as of March or April 1987. I am sending you the original of the letter to submit into the record of this nomination. Thank you.

Best regards,

Mary C. Dunlap
MARY C. DUNLAP

c. Honorable Alan Cranston

ABC NEWS INC. 4931 Lindell Boulevard St. Louis, Missouri 63108-1519 Telephone 314 454-9111

July 27, 1988

Ms. Mary Dunlap
1599 Dolores
San Francisco, CA
94110

Dear Mary:

To the best of my memory, this is why the reference to the lien on Tom Waddell's home was deleted from the story I did about Tom for ABC's 20/20 program:

I was informed by an attorney for the United States Olympic Committee--an attorney in Washington, D. C., as I recall--that the lien had, in effect, been lifted, that as long as you, as Tom's counsel, went through the formality of requesting that the lien be lifted, it would be lifted without opposition from the USOC.

If this were true, and I assumed that it was, my reference to the lien--contained in a stand-up which we filmed in Tom's home--was outdated. And so, logically, we removed it.

The story was on the air at the end of April, 1987. The information was given to me by the USOC lawyer sometime late in March or, more likely, in the first few weks of April.

Best wishes.

Sincerely,

Dick Schaap

Senator **Thurmond**. Mr. Chairman, just a minute before we stand in recess, I would like to respond to your statement earlier very briefly, 5 or 10 minutes.

Senator **Leahy**. The witnesses may step down.

Senator **Thurmond**. You stated about Mr. Treen——

Ms. **Dunlap**. I am sorry, Senator Leahy, are we excused?

Senator **Leahy**. Yes, you are. All witnesses are excused, the nominee is excused. Anybody can stay if they would like, but anybody that wants to leave can leave if they would like.

Senator Thurmond, did you have something you wanted to say?

Senator **Thurmond**. Yes. You stated about Mr. Treen having been appointed a Federal judge. He is a former governor of Louisiana. I want to make this statement, because you dwelt at length on him trying to explain the delay about his nomination.

Mr. Treen was nominated by President Reagan on July 22, 1987. The nomination remained pending before the committee for approximately 7 months with no action of which I am aware having been taken. Finally, on February 17, 1988 the committee sent a letter to the Department of Justice requesting an investigation based on information received from a confidential source. That contained less than factual allegations against Mr. Treen.

It is disturbing to me that it would take the committee 7 months to begin action on this nomination, and then to rely on vague and questionable information from a reportedly confidential source whose identity was not even given to the FBI who was asked to do the investigation. In fact, the allegations were such a nature that they could have been investigated by the committee's own staff and resolved almost immediately if that had been the desire.

We have had far too many incidences where the Department of Justice is burdened with the committee's responsibility. Requests of the Department of Justice can be a tactic which is used to delay nominations, and delays of this type are not uncommon in this committee. I feel it is unfair to any nominee as well as an efficient use of the committee's resources to resort to this strategy.

Mr. Chairman, when Mr. Treen wrote the President requesting this his name be withdrawn from consideration he stated that his nomination had been pending before the Judiciary Committee for over 9 months and he had never been given the opportunity to appear before the committee and respond to the allegations which had been made against him.

In addition, Mr. Treen commented in his April 26, 1988 statement that, and I quote,

> The Senate Judiciary Committee, which has had my nomination for 9 months, has yet to schedule a hearing. I cannot no longer afford the disruption to my law practice and business endeavors caused by this unwarranted delay.
>
> More recently, failure to schedule a hearing has been ascribed to certain charges from a source which the Judiciary Committee labeled confidential. None of these charges has any merit, but they do provide another convenient excuse for delay. I have no doubt that additional excuses will be found to further delay a confidential hearing. I simply cannot afford to suspend my private endeavors any longer.

Now, Mr. Chairman, this is a letter that I read before and which I believe you allege was confidential. And I want to read it now and then I want to read the Justice Department's reply. This was written to Senator Biden, chairman of the committee.

Dear Mr. Chairman, I am writing in response to a letter dated February 17th, 1988 from Senator Patrick Leahy requesting that the Federal Bureau of Investigation look into allegations regarding David Treen whose nomination to the U.S. Court of Appeals for the fifth circuit is pending before your committee. While the Department is pleased to assist your inquiries regarding judicial nominees, in order to help expedite the committee's processing of nominations, the Bureau has requested that you try to frame your questions more narrowly and provide full information to the Bureau to work with. This will help it to conduct an adequate inquiry.

For example, in order for the FBI to investigate allegations such as, "He is an avowed racist" and "It is reported that he never spoke a word to any black except to ask what the food was when a dish was served to him at the dining table," we would like to know the identity and location of the individual making the allegations. Only in that way can an interview be arranged and a complete and further investigation be conducted.

In addition, the Bureau indicates that before interviewing former governor Edwin Edwards on a matter of such sensitivity, it needs to have something more factual in hand than anonymous allegations such as those contained in Senator Leahy's letter. As soon as we receive the identity and location of the individuals behind these allegations, the FBI will commence its inquiry.

That is signed, Thomas M. Boyd, Assistant Acting Attorney General.

And the letter from the Justice Department to me dated May 26, 1988 reads as follows:

At your request, I am writing to set forth the Department's policy regarding judicial candidate communications between this agency and the Senate Judiciary Committee. As you know, during the course of the background investigative process, the committee has periodically written confidential communications in which it asks us to pursue additional leads on its behalf.

On those occasions when we respond in writing, as represented by my March 15, 1988 letter to Chairman Biden to which you referred in the executive session meeting earlier this week, we do so with the full knowledge and expectation that the committee may exercise its authority and determine when or if such correspondence will be made public.

It has been the longstanding policy of the Department that we will not release our communications to the committee absent permission from a recipient. This is a decision for the members of the committee to make.

In this case, Mr. Duke Short of your staff telephoned me after you had discussed the content of my March 15 letter in the executive session and informed me that Senator Leahy had raised the question of confidentiality at the same meeting. Mr. Short then inquired of me whether this letter should be considered to be in any way confidential. I replied that it was not so marked and I did not consider the contents to warrant that classification.

I added that the decision to release any correspondence to which you are a part or recipient was yours to make. I should add that this was especially true in this instance since my letter involved the case of a former candidate for a vacancy on the fifth circuit, Mr. David C. Treen, whose background investigation was then closed and who in his April 22, 1988 to the President had himself questioned the reasons for the delay in processing his confirmation.

It is important to stress that it remains the earnest desire of this Department to work with the committee in a cooperative effort to fill as many judicial vacancies as possible in the months remaining in President Reagan's term. The law enforcement needs of the country demand that we do no less.

I hope this letter fully responds to your request. If I can be of any further assistance, please do not hesitate to contact me. Sincerely, Thomas M. Boyd, Acting Assistant Attorney General.

Now, Mr. Chairman——

Senator LEAHY. They have got an awful lot of acting people down there, do they not? They ought to get some permanent positions——

Senator THURMOND. If you would get them confirmed, they would not be acting. If the Judiciary Committee would go ahead and confirm them, they would not be acting.

Senator **Leahy**. But nobody has been nominated for the position yet. If they do, we will be glad to have hearings.

Senator **Thurmond**. I want to say that right now before this committee——

Senator **Leahy**. Strom, do you have much more, because if you do we are going to recess and come back.

Senator **Thurmond**. I think I can finish in 5 minutes.

Senator **Leahy**. All right, we will recess and be back here in 15 minutes.

[Recess.]

Senator **Leahy**. We will resume when Senator Thurmond wishes to rejoin us.

Senator **Thurmond**. Mr. Chairman, I will continue now, if it is agreeable?

We now have before the Judiciary Committee 37 appointments awaiting action. Six of these are U.S. Circuit Court judges, three of which have been lingering in the committee since 1987. We now have, in the committee, 17 U.S. District Court judges, five of which have been lingering in the committee since 1987.

We now have five U.S. Department of Justice officials lingering in the committee, awaiting action. We now have one U.S. Claims Court judge lingering in the committee and awaiting action. We now have four U.S. Attorneys awaiting in the committee, one of which has been lingering since 1987.

We now have four U.S. Marshals awaiting in the committee, three of which have been lingering since 1987.

Mr. Chairman, I just want to say I think it is inexcusable, it is unjustified, it is unfair to allow these nominations to go by the board. The law enforcement people need these judges and need these other officials here. The Justice Department has to run. They are having to use acting people instead of people who have been confirmed.

I would urge you, in the absence of Senator Biden, if you are going to handle this work, to go forward and hold more hearings and where hearings have been held, to get the nominations out to the full committee so we can act on them.

Senator **Leahy**. Well, as I noted before to the distinguished Senator from South Carolina, every Senator who has asked to have their judicial nominee come forward before this committee, every single Republican Senator who has asked for it, has had that wish granted. We have brought the nominee forward, he has been heard, and it has been sent on to a vote.

Now there is one instance of a Democratic Senator who asked to have the same courtesy shown to the 12, 13, 14 or whatever it was Republican Senators and we had to decline partly because the Justice Department had failed to answer questions about him. But now that one also will be on.

Senator Thurmond, you spent most of your time talking about former Governor Treen and the delay that made him withdraw. You perhaps overlooked, and I am sure it was inadvertent, that he gave as a reason for withdrawing in his statement, he said—and I quote him—"I believe it a national imperative, for a number of reasons, that George Bush be elected our next president. I can probably contribute as much or more to the achievement of that goal by working for the election of George Bush than by personally filling a single position in the Federal judiciary."

He gave that as one of his reasons for leaving. I only mention that because you said that you had hoped that there would be nothing partisan in handling of judgeships. I guess the partisanship only comes in the withdrawing of one's name for a judgeship.

Did you have anything further you would like to say?

Senator **Thurmond**. Mr. Chairman, I would like to say on that particular point you mention, he said that he waited for 9 months and never did get a hearing. He could not wait any longer. His law practice would suffer. He just could not wait.

Then he incidentally mentioned, since it was not going to happen, that he expected to work for Mr. Bush because he felt the situation might get remedied.

I want to say further that you said the request of all Republican Senators here——

Senator **Leahy**. Made to me.

Senator **Thurmond**. I want to ask you now if these Senators had made a request to you. Has Senator Armstrong made a request to you?

Senator **Leahy**. Yes, he did, about a Mr. Erickson and we had the hearing.

Senator **Thurmond**. Has any action been taken? Armstrong has two, I believe. Abram is one and Erickson is another.

Has Senator D'Amato made a request to you?

Senator **Leahy**. Yes, and we had those hearings.

Senator **Thurmond**. Is any further action going to be taken?

Senator **Leahy**. Why do you not ask Senator D'Amato if he feels that there has been any delay on the part of the chairman? I think that would be the person to ask. I much prefer he speak for himself.

Senator **Thurmond**. There have been no results further.

Senator **Leahy**. Why do you not ask Senator D'Amato? If Senator D'Amato feels there has been any delay, I will be glad to rectify that, but you ask him.

Senator **Thurmond**. Senator D'Amato has a hearing on one here, I notice, on April 21. He had hearing on two, on two district judges and there has been no action taken yet. This is the middle of June.

Senator Wilson, I believe, has another judge here. Is there any plan to take that up?

Senator **Leahy**. Senator Wilson's other judge is being heard next week. It is on the schedule. You probably have not had a chance to see that, but it should be sitting on your desk.

Senator **Thurmond**. Senator Helms has——

Senator **Leahy**. Do you not read the mail you get from me, Senator Thurmond?

Senator **Thurmond**. I certainly do.

Senator **Leahy**. You probably just missed that one.

Senator **Thurmond**. Senator Helms has, he is a district court judge from North Carolina.

Senator **Leahy**. I believe that is scheduled for this month, as a matter of fact.

Senator **Thurmond**. Another judge from North Carolina.

Senator **Leahy**. I have not had a request from him on that one.

Senator THURMOND. You have not had a request from either one?

Senator LEAHY. No, I have on Mr. Voorhees. As soon as Senator Helms requested it of me, I had him scheduled and he is scheduled for June 22, as the letter from me to you states. I really wish you would read the mail you get from me, Senator Thurmond. It would save us a lot of time.

Senator THURMOND. Two from North Carolina. One is Voorhees and one is Tilly. Has Senator Helms talked to you about either of those or both of them?

Senator LEAHY. Yes, about Mr. Voorhees and Mr. Voorhees has been scheduled.

Senator THURMOND. Not about Mr. Tilly?

Senator LEAHY. No.

Senator THURMOND. All right. I want to pass that to him. Has Senator Gramm talked to you?

Senator LEAHY. Senator Thurmond, if you will read my letter and if there are questions that are still unanswered, I would be glad to talk to you about them.

Senator THURMOND. This letter that you wrote me, that was handed to us a few minutes before the hearing.

Senator LEAHY. That is why I read it in total, so that in case you did not want to read it yourself, you could listen to it.

Senator THURMOND. We read letters from Senators. It just came in, as you well know, just a minute or two before the hearing, and why do you ask now about my not reading your mail, when you know I did not have a chance to do it before the hearing?

Senator LEAHY. That is why I read it to you. Do you recall that, Senator Thurmond, at the beginning? It was only 5 hours ago, I read it to you.

Senator THURMOND. On these circuit court judges, Bob Hope has a daughter-in-law that has been appointed to the circuit court here, Judith Richards Hope. I was asked today, by several people, about the status of that. This came in April and there has not been a hearing scheduled, that I know of. Is there any plan now to have a hearing on her? Judith Richards Hope.

Senator LEAHY. We will send you the list of hearings, Senator Thurmond.

Senator THURMOND. Of all these people here, of the circuit court judges, half of them have not had hearings and the others are just there waiting.

Senator LEAHY. Senator Thurmond, it is remarkable that I constantly get letters from your colleagues thanking me for moving their nominees up. You are the only one I hear otherwise.

Senator THURMOND. I do not have any judges nominated.

Senator LEAHY. Oh, I see. You are the designated hitter, Senator Thurmond? Are you the designated hitter on this?

Senator THURMOND. No, I am the ranking member of this committee and I have a responsibility. Why do they have to get down and grovel in the dirt and get to your heels to beg you to hold a hearing or to act after a hearing? Why do you not go and do it? It is your duty to do it.

Senator LEAHY. Senator Thurmond, now you are being insulting, both to your colleagues and to me. You know that nobody——

Senator THURMOND. I am not insulting at all.

Senator **Leahy**. You know that nobody——

Senator **Thurmond**. Why do you not do it?

Senator **Leahy**. You know that nobody would have to grovel to ask for anything here, nor would I stand for anybody——

Senator **Thurmond**. Why do you make them come to you?

Senator **Leahy**. May I finish?

Senator **Thurmond**. When the person appoints them, why do you not go and act on them? Why do they have to come and beg you to hold a hearing? Why do they have to come and beg you to get action on them?

Senator **Leahy**. I just try to follow the precedent that the distinguished Senator from South Carolina established when he was chairman of the committee.

Senator **Thurmond**. I have never followed that precedent to make people come and beg me to have a hearing.

Senator **Leahy**. I felt, Senator Thurmond, a great deal of respect for you. After all, I said before, you were Governor of your State when I was only three or four years old. You came to the Senate when I was only about 12 or 13. I have to respect that.

Senator **Thurmond**. You are old enough now to exercise judgment and take action. You may have been a child years ago, we all were. But now you are a man, you are a Senator and you are supposed to be responsible, and that is what I would like to see you be.

Senator **Leahy**. Does the distinguished Senator have anything further he would like to chat about?

Senator **Thurmond**. I do not think so. Thank you.

Senator **Leahy**. We will stand in recess.

Senator **Thurmond**. I just want to get some action.

[Whereupon, at 7:04 p.m., the committee was recessed.]

APPENDIX A

OTHER SUBMISSIONS CONCERNING

INTERNATIONAL OLYMPIC COMMITTEE v. SAN FRANCISCO ARTS AND ATHLETICS, INC.

I. Submission of Mary C. Dunlap, Esq., to Samuel L. Williams, Esq., November 12, 1987*

II. Letter from Vaughn R. Walker, Esq. to Steven J. Metalitz, March 25, 1988*

III. Memorandum from Ms. Dunlap to Mr. Metalitz, April 7, 1988*

IV. Correspondence between Judiciary Committee and Judith Baer, Esq., June 27 and July 28, 1988

V. Opinion letter prepared by Professor Pierre R. Loiseaux, July 5, 1988

* Some exhibits printed elsewhere in transcript; omitted exhibits available in Committee files

MARY C. DUNLAP
ATTORNEY AT LAW
1599 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) 282-6555

November 12, 1987

TO: Samuel L. Williams
HUFSTEDLER MILLER CARLSON & BEARDSLEY
355 South Grand Avenue, 45th Floor
Los Angeles CA. 90071

Re: ABA Judiciary Committee
Screening of Vaughn R. Walker
For Appointment to U.S. District
Court for Northern District of
California

Dear Mr. Williams,

Thank you for your inquiry to me concerning my evaluation of Mr. Vaughn R. Walker for possible appointment to the U.S. District Court bench in San Francisco. I have evaluated Mr. Walker based solely on my knowledge of him from our litigation, as counsel to adverse parties, in United States Olympic Committee & International Olympic Committee v. San Francisco Arts & Athletics, Inc. and Dr. Thomas F. Waddell (deceased), C-82-4183 JPV, affirmed on merits, attorneys fees award vacated and remanded, 781 F.2d 733 (9th Cir. 1986), affirmed on merits, sub nom San Francisco Arts & Athletics Inc. v. United States Olympic Committee, _ U.S. _, 97 L.Ed.2d 427, 109 S.Ct. 2971 (1987). I have no knowledge of Mr. Walker's conduct or other relevant aspects of this candidate in any other context.

I have evaluated Mr. Walker in each of the categories mentioned in our telephone discussion, to wit., legal ability and knowledge of law; integrity and honesty; sensitivity; biases. I have not evaluated Mr. Walker based on his political ideology or philosophy, and I have strived to set aside the fact that he and I have been and continue to be adversaries in the Olympic case. I note in this regard that there have been a number of adversaries of mine whom I have been called upon over the years to evaluate in terms of their judicial qualifications, and I have recommended more than one of these. I also teach law, and have done so for about 15 years; a number of my students who have earned high marks have heartily opposed my views and disagreed with me on many subjects. This experience aids me in setting aside whatever personal reaction I may have as an adversary, as to Mr. Walker, in evaluating him according to the categories identified above.

I offer the below summary of my evaluation of Mr. Walker:

I. Legal Ability and Knowledge of Law

The knowledge of law demonstrated by Mr. Walker in the Olympic case has been competent, but unspectacular. His ability to provide a logical, coherent argument orally is good, although, again, not especially impressive. His written work is average (as compared with the work of dozens of lawyers whom I have opposed, in state and federal court, from 1973 to the present).

Mr. Walker's skill in making a record can be questioned. Because of the overly hospitable reception to his position, I believe, Mr. Walker failed to litigate and make a record on most of the pleaded causes of action of his clients, IOC and USOC. The U.S. Court of Appeals, in vacating and remanding the attorneys fees award won by USOC below, put the matter this way:

> "On remand, the trial court should determine how much of the work was reasonably necessary. Most of the counts advanced by plaintiffs appear to have been ignored after the initial pleading. Plaintiffs' primary argument in its motion for attorneys' fees has been abandoned on appeal... the court should examine both the reasonableness and necessity for the rather impressive amount of time accumulated on this case."
>
> --- 781 F.2d 733, 739 (emphasis added).

Overall , I would rate Mr. Walker competent (but nothing better) in legal ability and knowledge of law.

II. Integrity and Honesty

I have serious questions and deep discomfort about Mr. Walker's integrity and honesty. These doubts are sufficiently deep that I have prepared a separate outline, complete with documentary exhibits, to show the basis for my real concern about this aspect of Mr. Walker's judicial qualifications. This separate outline enumerates actions by Mr. Walker in the Olympic case which form the foundation of my opinion that Mr. Walker does not have the degree of integrity and honesty that I would minimally require for any federal judicial appointee. The summary I would offer of these examples is simply this: Throughout the Olympic case, in which Mr. Walker was at the helm and was lead counsel (except in the U.S. Supreme Court), Mr. Walker has engaged in serious and repeated misstatements of fact, in use of non-evidentiary materials (ie. newspaper articles) as evidence, and in late filings, all to disadvantage San Francisco Arts & Athletics and the late Dr. Waddell, and myself as their counsel of record. Most recently, also, Mr. Walker has filed a motion for attorneys fees that ignores the law of the case (made by the Court of Appeals at 781 F.2d 738-39), contradicts the statement by USOC president Robert Helmick that "[W]e certainly are not going to pursue any monetary judgment against any of the principals or the organization itself" (Decl. of Philip Wasserman, NBC Field Producer, as to statement made by Pres. Helmick on 6/25/87, when the Supreme Court decision in the Olympic case was announced; note that Mr. Wasserman's declaration is unsigned, but was given to me verbatim by telephone, and is attached to my Declaration Opposing USOC's Motion For Attorneys Fees, enclosed), and --- most seriously of all, in my judgment--- claims that SFA&A and its principals used the word "Olympic" in 1986, based on a photograph that neither depicts the principals nor anyone else at Gay Games II in 1986, and appears to be offered to prejudice the question of SFA&A's good faith use of "Olympic" before it was enjoined from promotional uses as of August 1982. The motion by Mr. Walker for attorneys' fees is, I believe, in utter bad faith. (See separate outline and Defendant's Memo. Opp. USOC Motion for Atty. Fees (filed 11/5/87), included herein). The motion by itself would give me serious pause about Mr. Walker's integrity; in the context of Mr. Walker's actions throughout this litigation, including his misstatements of fact to gain advantage, his reliance on non-evidentiary matters to gain advantage and/or to prejudice the trier, his late filings and his misuse of the lien on Dr. Waddell's property to gain advantage, I take the motion for attorneys fees in 1987 to mean that Mr. Walker has not changed a bit in his willingness, at every stage of this litigation, to use dishonest means to win, or at least to disadvantage his adversaries.

III. Sensitivity and Biases

I personally believe that Mr. Walker's entire position in this litigation, in behalf of USOC and IOC, is homophobic and anti-gay. Four members of the U.S. Supreme Court "agreed", to the extent of having indicated in their opinions that at least SFA&A was entitled to a trial of its counterclaim that USOC discriminated against it on account of sexual orientation in attacking the "Gay Olympic Games". SFA&A v. USOC, 97 L.Ed. 2d at 455-56 (Justices O'Connor and Blackmun would reverse the Court of Appeals' finding of no government action and remand for trial upon the claim of discriminatory enforcement); 97 L.Ed.2d at 456-72 (the Act giving USOC the word "Olympic" violates the First Amendment rights of petitioners). However, although I personally believe that Mr. Walker's entire position in this litigation is homophobic and anti-gay, I do not believe or expect that such prejudices are disqualifying of federal judges (although I may personally wish and hope for the day to come when this will be the case).

I am unaware of Mr. Walker's "sensitivity" or "biases" otherwise. His treatment of Dr. Waddell and SFA&A does leave me with the distinct impression that Mr. Walker lacks that most essential of facets of character for a fair judge --- compassion for those less fortunate and powerful than oneself. However, because this distinct impression is based on only one case, it is possible that Mr. Walker does not generally show a lack of compassion in his cases; I simply do not know this, one way or the other.

IV. Conclusion

Based on my evaluation of Mr. Walker on each of the above-recited criteria, it is my opinion that he is not qualified to serve on the federal bench.

I understand that you may need to identify me by name, or otherwise to reveal your source of these comments and views. I authorize you to do so to whatever extent you find necessary in your evaluation process as to Mr. Walker. Also, if you find it useful to confront Mr. Walker directly with any of the enclosed written material, please feel free to do so.

My opinions and assessments are those of a highly experienced practitioner of civil rights law. Because you may need more details about myself in order to weigh the views I have provided, I enclose a copy of my resume for your information.

I remain ready to respond to any further inquiries from you about this matter, Mr. Williams. As I told you by telephone, it is a painful thing to have to offer such negative appraisals of a fellow member of the Bar. However, I believe in the benefits of the ABA judicial qualifications process, and would disserve that belief if I were to withhold any of the views or materials I have provided. Please feel free to call upon me further if you need to do so.

Best regards,

Mary C. Dunlap

MARY C. DUNLAP

Postscript: At 5:10 last evening, I received documents from Mr. Walker's law firm, proposing to withdraw the USOC's motion for attorneys fees and to settle the case on the terms agreed to by Messrs. Walker and Hansen and myself, which I had been informed three weeks ago that the USOC Board had rejected. The withdrawal of the motion, while a relief to my clients and myself, does not in any way alter my views about the meaning of the motion to assessment of Mr. Walker's integrity.

Outline of Relevant Conduct of Vaughn R. Walker In
Litigation of the Olympic case (C-82-4183 JPV):
(Basis for M. Dunlap Opinion As To The Lack Of
Integrity and Honesty of Mr. Walker As A Judicial
Candidate)

Index   Page:

I. MISSTATEMENTS OF FACT BY MR. WALKER

A. Misstatements Concerning SFA&A's Alleged Use of Protected USOC Symbols 3
B. Misstatements Concerning the Intent of Dr. Thomas F. Waddell 6
C. Misstatements As To Alleged Misconduct and/or Contempt Of Court By Defendants 7

II. RELIANCE ON MATTERS OUTSIDE RECORD AND ON NON-EVIDENTIARY MATERIALS

A. Reliance On Newspaper Articles 7
B. Reliance On Alleged Personal Knowledge Uncorroborated By Any Evidentiary Submission 8

III. UNTIMELY FILINGS WITHOUT CONSENT OF COURT

A. Submissions On The Motion For Preliminary Injunction 8
B. Submissions On The Motion For Attorneys Fees (1984) 9

IV. MISUSE OF THE ECONOMIC VULNERABILITY OF DR. WADDELL AND SFA&A

A. Misuse of the Lien On Dr. Waddell's Residential Property .. 10
B. Misuse of the Non-Profit And Economically Vulnerable Condition of SFA&A 11

V. BAD FAITH FILING OF THE 1987 MOTION FOR ATTORNEYS FEES ... 12

NOTE AS TO EXHIBITS 14

I. MISSTATEMENTS OF FACT BY MR. WALKER

Throughout the litigation of IOC and USOC v. SFA&A and Dr. Waddell (below, "the Olympic case"), Mr. Walker repeatedly has engaged in misstatements of fact and distortions of the factual record in the case. The particular misstatements and distortions by Mr. Walker, other than those contained in the 1987 motion for attorneys' fees, are specified below:

A. Misstatements Concerning SFA&A's Alleged Use Of Protected USOC Symbols

The Amateur Sports Act of 1978, 36 U.S. Code section 371, provides in pertinent part that USOC has certain rights in the words "Olympic", "Olympiad", "Citius Altius Fortius", and in certain symbols, specified therein, to wit., "the emblem of the [USOC], consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief". 36 U.S. Code section 380(a)-(c) (emphasis added). The Act also protects the IOC's symbol, "consisting of 5 interlocking rings" (emphasis added). Nowhere in the law is there any protection in USOC or IOC for any 3-ring symbol.

SFA&A never used any of the Olympic symbols protected by the Act, as the case record makes very plain. SFA&A used the word "Olympic" to designate its "Gay Olympic Games", and immediately and totally ceased using "Olympic", "Olympics" and "Olympiad" upon being enjoined from doing so in August 1982; SFA&A also used a 3-ring symbol, not a protected USOC symbol, for a period before the injunction was granted. (See Exhibit A to this document)

Nonetheless, throughout the case, Mr. Walker continuously claimed and argued that SFA&A had used legally protected Olympic symbols. This important misrepresentation was first made by Mr. Walker on August 9, 1982, at the hearing of the motion for temporary restraining order. Mr. Walker then contended that SFA&A was using not only the word "Olympic" but also that SFA&A was using a protected Olympic symbol, erroneously asserting that a 3-ring, as opposed to a 5-ring, symbol was protected by the Act (See Exhibit B hereto); SFA&A had used a distinctive 3-ring symbol before the litigation commenced, but never used a 5-ring symbol nor any other protected Olympic symbol. Ms. Dunlap corrected Mr. Walker on his misstatement on this occasion, on the record on August 9, 1982. (See Exhibit C hereto) Mr. Walker nonetheless continued to make this same misstatement of record, repeatedly in the litigation, as follows:

1. On August 19, 1982, at the hearing of the motion for preliminary injunction, Mr. Walker claimed USOC was suing SFA&A for "the unauthorized use of Olympic terminology and Olympic symbols". (See Exhibit D hereto) Once again, Ms. Dunlap pointed out the misstatement to Mr. Walker and to the court. (See Exhibit E hereto)

2. On January 17, 1983, in a brief for USOC and IOC as appellees in the U.S. Court of Appeals for the Ninth Circuit, in an appeal by SFA&A from the preliminary injunction, Mr. Walker signed a brief with other counsel for appellees in which they argued that SFA&A had used "the Olympic symbol" and "various 'Olympic' designations". (See Exhibit F hereto) Ms. Dunlap called the appellate court's atttention to the misrepresentative nature of this allegation by appellees, in her reply brief. (See

Exhibit G hereto)

3. On September 16, 1983, Mr. Walker filed a memo of points and authorities in support of USOC's motion for summary judgment, in which he asserted that USOC had sued SFA&A to prevent "unauthorized use of Olympic terminology and symbols". (See Exhibit H hereto). In oral argument on this motion, Mr. Walker repeated this claim. (See Exhibit I hereto)

4. On May 24, 1984, Mr. Walker orally argued USOC's first motion for attorneys fees to the District Court, and asserted that "defendants [SFA&A and Dr. Waddell] went ahead and put together games using Olympic symbols and terminology", and that "[defendants] ...say they used Olympic terminology and symbols solely to spark a test case ... because they wished to challenge the constitutionality of the USOC's proprietary right in these symbols and in these terminologies." (See Exhibit J hereto)

Mr. Walker's persistent misrepresentation as to SFA&A's alleged use of protected Olympic symbols was material, in that SFA&A's use of "Olympic" presented a straightforward, pure First Amendment controversy, involving use of a 2700-year old generic word (and not modern symbols), and in that SFA&A's non-use of any protected USOC or IOC symbol made it all the more improbable that anyone would confuse the "Gay Olympic Games" with USOC or its activities. Mr. Walker knew these facts, and yet he repeatedly made the same misrepresentation, at every significant stage of the case in which he was involved. He knew the harm to SFA&A that resulted from his confusion of the real legal issues presented, by means of his misrepresentation of the factual record continuously to allege that SFA&A had used a symbol or symbols protected by the

Act, when nothing in the record established anything of the sort.

B. Misstatements Concerning The Intent of Dr. Thomas F. Waddell

In support of USOC's motion for preliminary injunction, Mr. Walker argued that Dr. Waddell had some intention to remove the "Gay Olympic Games" from the gay community. That argument relied upon Mr. Walker's interpretation of a newspaper article. (See Exhibit K hereto) Dr. Waddell never had any such intent, as Mr. Walker certainly should have learned by the response he received from Dr. Waddell, under oath, in a request for admission by Mr. Walker. Mr. Walker asked Dr. Waddell to admit that it was his intention to remove the Gay Olympics from the gay community, citing the newspaper article. (See Exhibit L hereto) Dr. Waddell denied that the newspaper article quotation was correct, and Dr. Waddell denied that the long-range goal of the Gay Olympics was to sever ties from the gay community. (See Exhibit M hereto). Nonetheless, Mr. Walker then asserted in his moving papers for summary judgment that the intent of Dr. Waddell was to sever the Gay Olympics from the gay community, citing the self-same article that Dr. Waddell had factually denied in his sworn response to the request for admissions. (See Exhibit N hereto) Ms. Dunlap pointed out this misstatement of fact in her opposition to USOC's motion for summary judgment. (See Exhibit O hereto).

C. Misstatements As To Alleged Misconduct and/or Contempt Of Court By Defendants

Upon the issuance of the t.r.o. enjoining use of "Olympic", and at all times from August 9, 1982 to the present, SFA&A and its agents dutifully and strictly obeyed all injunctive orders and avoided any use of "Olympic" that might be within the prohibition of those orders. (See Exhibit P hereto) Nonetheless, in support of USOC's motion for attorneys' fees, Mr. Walker alleged that SFA&A and Dr. Waddell had engaged in "willful misconduct" as to use of "Olympic"; Mr. Walker based this serious and utterly false accusation on SFA&A's publication of a news-type article about the so-called "1986 Lesbian/Gay Winter Olympic Games", and of a photograph of U.S. Olympic athletes at Gay Games I who had elected to wear their hard-earned Olympic sweatshirts at the opening ceremonies there; Mr. Walker accused defendants and their counsel of engaging in "contemptuous" action, when nothing resembling a willful trademark infringement or a contempt could be said to have occurred. (See Exhibit Q)

SFA&A rebutted this false accusation of misconduct, which Mr. Walker had made in the context of seeking to convince the court that SFA&A and Dr. Waddell were wilful, deliberate, fraudulent and malicious trademark infringers who deserved to pay USOC $96,600. attorneys fees for their conscientiously wrong action. (See Exhibit Q)

II. RELIANCE ON MATTERS OUTSIDE RECORD AND ON NON-EVIDENTIARY MATERIALS

A. Reliance On Newspaper Articles

Along with Mr. Walker's reliance on a newspaper article to assert that Dr. Waddell intended to sever the Gay Olympic Games from the gay community (see Part I. B. of this Outline, above), Mr. Walker argued, on the basis of a newspaper article, that SFA&A and Dr. Waddell should be held to be knowing infringers of USOC's rights because "defendants, apparently, were looking for trouble." (See Exhibit R hereto) This spurious and highly prejudicial characterization, based on a newspaper article, was offered by Mr. Walker in spite of a record replete with showings of Dr. Waddell's and others' good faith intent in using "Olympic". (See Exhibit S hereto)

B. Reliance On Alleged Personal Knowledge Uncorroborated By Any Evidentiary Submission

In August 1982, in response to SFA&A's point that USOC was permitting the Police Olympics to use the word "Olympic", unenjoined and unabated (See Exhibit T hereto), Mr. Walker asserted without any evidentiary foundation that USOC was engaged in negotiations with the Police Olympics sponsors as to their use of "Olympic". (See Exhibit U hereto) At no time was Mr. Walker's assertion followed by the introduction of any record evidence showing any such negotiations or other action by USOC as to the Police Olympics. The court granting the preliminary injunction relied on this factually unsupported assertion by Mr. Walker, to conclude that no discrimination was occurring. (See Exhibit V hereto) The matter of USOC's favoritism and discriminatory treatment of the Police Olympics was a crucial factual issue in this case, as to which Mr. Walker's unsupported factual assertion harmed SFA&A's position in the case. (See Exhibit W hereto)

III. UNTIMELY FILINGS WITHOUT CONSENT OF COURT

A. Submissions On The Motion For Preliminary Injunction

In granting the t.r.o., District Judge Conti ordered the papers in support of the motion for preliminary injunction to be served by August 10, 1982, and the opposition by SFA&A and Waddell to be served by August 16, 1982. Mr. Walker continued to serve a volume of supplemental declarations and other supporting papers through August 17, 1987, the evening before the hearing on the preliminary injunction, without any authorization (eg. an order shortening time or other order) permitting Mr. Walker to do so. Ms. Dunlap noted this prejudicial lateness in her opposition to the motion at oral argument. (See Exhibit X hereto)

B. Submissions On The Motion For Attorneys Fees (1984)

Local Rule of Court 270-2 requires a party moving for attorneys fees to file certain declarations in support of that motion, specifically enumerating the hours expended, setting forth the relevant experience of counsel, and providing other facts necessary to determine (and for defendants to challenge) the reasonableness of a claim for fees. Mr. Walker completely ignored this rule, filing declarations in reply to Ms. Dunlap's opposition to the motion for attorneys' fees, at a time after she would be able under the rules to oppose or otherwise respond to their contents. (See Exhibit Y hereto) As Ms. Dunlap argued to the U.S. Court of Appeals for the Ninth Circuit, the untimeliness of Mr. Walker's filings at the reply stage severely prejudiced her ability to rebut the showings contained in those late filings. (See Exhibit Z hereto)

IV. MISUSE OF THE ECONOMIC VULNERABILITY OF DR. WADDELL AND SFA&A

A. Misuse of the Lien On Dr. Waddell's Residential Property

While SFA&A and Dr. Waddell sought to appeal the award of $96,600. attorneys fees against them, to the Ninth Circuit, USOC proceeded to put Dr. Waddell through a debtor's examination and then proceeded to try to enforce the judgment during the appeal. Ms. Dunlap sought and secured a stay of the judgment, arguing that the attorneys' fees award was not sufficiently based in the record on in relevant law to be likely to be upheld.

Allegedly in order to secure its interest in payment of $96,600. in attorneys fees by Dr. Waddell, in 1984 before the stay was granted USOC placed a lien on his residential property at 141 Albion Street, San Francisco CA. (the home in which Dr. Waddell personally resided until his death in July 1987). After the Court of Appeals vacated and remanded the attorneys fees award in 1986, Ms. Dunlap wrote to Mr. Walker and asked him to see to it that the lien was removed immediately, in that it could not be said to be securing any judgment, since the judgment it was allegedly intended to secure had been vacated. Mr. Walker delayed removal of the lien (leaving its coercive and frightening effect hanging over Dr. Waddell) throughout the review of the action by the U.S. Supreme Court, and Mr. Walker evaded the repeated requests by Ms. Dunlap, and by Ms. Judy Baer, who is the lawyer for Dr. Waddell's estate, to have the lien removed. After Dr. Waddell died (not knowing for sure if his daughter Jessica would inherit his house as he intended, free and clear, because of the lien still pending), Mr. Walker finally signed a document in July 1987, at Ms. Baer's behest, releasing the lien.

While refusing to act affirmatively to remove the lien, Mr. Walker asserted that it was somehow Ms. Dunlap's or Dr. Waddell's responsibility to do so. As Ms. Baer determined in her research on the matter, the power to remove the lien rested all along not with the person affected, but with USOC and its attorneys. During this period, Mr. Walker and/or his clients, including USOC President Robert Helmick, claimed that the lien had been removed when media representatives inquired about it.

The documents establishing this set of transactions are partly in the files of attorney Judy Baer, who is ill at this time. Ms. Dunlap will provide all relevant documents when they become available.

B. Misuse Of The Non-Profit And Economically Vulnerable Condition of SFA&A

After the USOC won on the merits in the Ninth Circuit, and particularly because USOC continued to threaten to collect sizeable attorneys fees from Dr. Waddell, Dr. Waddell and the Board of SFA&A directed Ms. Dunlap to offer to settle the action in its entirety, on the following terms: SFA&A and Dr. Waddell would forego further litigation of their defenses and counterclaims, and USOC would waive its now-questionable claim for attorneys fees (the Court of Appeals having vacated and remanded the award, based on the absence of proper weighing by the District Court of the reasonableness of the defenses proffered, and of the necessity of the amount of fees claimed). Mr. Walker rejected the offer, telling Ms. Dunlap that USOC would not settle for less than half (ie. $48,300.) of the attorneys fees originally awarded. Mr. Walker was fully aware when he insisted on such payment that SFA&A had no funds to pay any such amount, and that the pressure would remain on Dr. Waddell to fear that if he and SFA&A pressed the claims and defenses of discrimination and abridgement of free speech (which four Supreme Court Justices ultimately found meritorious), he would be personally liable for a huge sum of plaintiffs' claimed attorneys fees. Such pressure certainly would have caused a less courageous group of litigants than Dr. Waddell and the SFA&A Board to give up well before Ninth Circuit and U.S. Supreme Court review. Ms. Dunlap contends that Mr. Walker was fully aware of the psychological effects of his financial tactics.

V. BAD FAITH AND FRIVOLOUS FILING OF THE 1987 MOTION FOR ATTORNEYS FEES

Ms. Dunlap believes that the motion for attorneys fees filed in behalf of USOC in 1987 speaks best for itself about Mr. Walker's ethics and integrity in his role as lead counsel in this litigation. Accordingly, Ms. Dunlap has enclosed a copy of all moving and all opposition papers filed as of 11/7/87 in conjunction with said motion. It is noted that, unlike prior motions and briefs, Mr. Walker did not sign the 1987 motion for attorneys fees. However, telephone conversations with Mr. Walker cause Ms. Dunlap to believe that he participated in its preparation.

As of 11/11/87 at 5:10 p.m., Ms. Dunlap received a proposed stipulation from Mr. Walker's office, to withdraw the motion and settle the case. These are attached hereto (See Exhibit AA hereof). No explanation for the shift in position has been provided by Mr. Walker as of this date. Although the letter from Mr. Walker's office refers to some "confusion" about whether the case would settle, there was no "confusion" mentioned to Ms. Dunlap before this letter was received on 11/11/87.

#2

VAUGHN R. WALKER
P. O. BOX 7880
SAN FRANCISCO, CA 94120
(415) 983-1500

March 25, 1988

Mr. Steven J. Metalitz
Chief Nominations Counsel
Senate Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Mr. Metalitz:

In accordance with our discussions on February 19 and permission I have since received from the United States Olympic Committee ("USOC"), I am now able to provide the Judiciary Committee documentary materials pertinent to charges which have been made about my conduct in the "Gay Olympics" litigation (San Fran. Arts & Athletics v. U.S.O.C. (1987) 483 U.S. ___, 97 L.Ed.2d 427, 107 S.Ct. 2971). A copy of a letter from the Counselor of the USOC on the subject is enclosed as Exhibit A.

As litigation counsel, I successfully represented USOC* in obtaining both preliminary (International Olympic Committee v. San Francisco Arts and Athletics (N.D.Cal. 1982) 219 U.S.P.Q. 982 (Exhibit B hereto), affirmed (9 Cir. 1983) 707 F.2d 517) and final injunctions and an award of attorneys' fees against the sponsors of the "Gay Olympics," including its chief organizer Dr. Thomas Waddell (Int. Olympic Com. v. San Francisco Arts & Athletics (9 Cir. 1986) 781 F.2d 733, opinion modified and rehearing denied 789 F.2d 1319). Because the attorneys' fees were not paid during the appeals, the judgment for attorneys' fees was recorded ("a lien") to protect USOC's ability to collect the award.

The injunctions were upheld on appeal, but the appellate court sent back the attorneys' fees issue for further proceedings in the trial court (781 F.2d at 739).

---

* The International Olympic Committee was also a plaintiff. The decision to initiate litigation was made by USOC's regular trademark law firm in Washington, D.C., Beveridge, DeGrandi & Kline, now Kline, Rommel & Colbert, one of whose partners, Richard G. Kline, is Counselor of the USOC. My law firm was engaged as litigation counsel.

Following the appeal, but before the case returned to the trial court for these further proceedings, the United States Supreme Court, on October 20, 1986, decided to review the decisions granting the injunctions (479 U.S. __, 93 L.Ed.2d 286, 107 S.Ct. 312). The attorneys' fees award was not brought to the Supreme Court. USOC decided to hire another lawyer for the Supreme Court proceedings and in November 1986 selected John G. Kester of Williams & Connolly in Washington, D.C.

The lawyer who represented the losing parties in the "Gay Olympics" litigation, Mary Dunlap, and others have made several charges about my conduct in that litigation. These charges have been publicized in San Francisco newspapers; I have previously forwarded to you copies of the pertinent articles which have come to my attention. Among the charges, T. J. Anthony of the Feminist Men's Alliance is identified as stating that USOC's case was an "open attack against homosexuals" and "Walker's decision to take on the case showed gross insensitivity to gays" (Bay Guardian, Jan. 20, 1988, p. 7). Ms. Dunlap has been quoted as stating that I acted improperly and "endeavored to make the last days of Waddell's life difficult" (The Recorder, Feb. 5, 1988, p. 1).

Ms. Dunlap has charged that I employed "tactics designed to intimidate a terminally ill individual [Waddell] who was worried about being able to pass his house to his young daughter" (The Recorder, Jan. 7, 1988, p. 7). Ms. Dunlap added that I "withheld action [on the liens] for a period of many months while telling the media that the lien was removed" (The Recorder, Jan. 7, 1988, p. 7). Some of Ms. Dunlap's comments were reported as follows:

> "[T]he lien created serious problems for Waddell. Walker did not remove the lien, she said, until a year and a half after the attorneys' fees were overruled and a few days after Waddell's death. * * * 'He died not knowing if his daughter would be able to inherit [his properties],' she said" (Bay Guardian, Jan. 20, 1988, p. 7).

I am also aware that Ms. Dunlap has submitted detailed adverse comments about me to a member of the ABA Standing Committee on the Federal Judiciary. A copy of Ms. Dunlap's submission to the ABA Standing Committee is enclosed with this letter; the submission includes Ms. Dunlap's letter to a committee member, an outline of allegedly relevant conduct and exhibits. In this submission, Ms. Dunlap reiterated the charges that I misused the liens to exploit the "economic vulnerability of Dr. Waddell" and the "Gay Olympics" group.* Ms. Dunlap additionally alleged that in my handling of the case I made misstatements of fact, relied on nonevidentiary matters outside the record, made untimely filings and in 1987 filed an attorneys' fees motion in bad faith.

I welcome the opportunity to answer Ms. Dunlap's charges. It is flatly untrue that I undertook to represent USOC out of any hostility to gays or that I prosecuted the case with unprofessional zeal. I did not employ tactics to intimidate Dr. Waddell. Nor did I withhold action on the USOC liens so that Dr. Waddell would not know about his daughter's inheritance. Any uncertainty Dr. Waddell may have had about his properties was due to his own lawyers including Ms. Dunlap, not me. If there was delay and inaction regarding the liens, it was on the part of Ms. Dunlap and Dr. Waddell's other lawyer.

Ms. Dunlap took no action on these liens for over a year after the time they became not effective. Even when invited by USOC's Washington, D.C. lawyers to take action, Ms. Dunlap did nothing. In response to a telephone inquiry, I wrote Dr. Waddell's other lawyer that the liens were not effective and this lawyer knew before Dr. Waddell's death that USOC did not plan to seek recovery of its attorneys' fees out of Dr. Waddell's personal assets. Still this attorney did not send me the releases for the liens that she said were necessary until two days before reported date of Dr. Waddell's death.

Contrary to Ms. Dunlap's allegations, I promptly and truthfully communicated to her and Dr. Waddell's other attorney about the liens on his property, took appropriate action to the extent I had authority to do so and did not use the liens to harass Dr. Waddell. Because of my action, Dr. Waddell should have known well before his death that the liens were ineffective if Ms. Dunlap and his other lawyer truthfully communicated with him.

---

* The corporate sponsor of the "Gay Olympics" operates under the style San Francisco Arts & Athletics.

Ms. Dunlap--not Dr. Waddell--precipitated this lawsuit. Initially, Dr. Waddell had agreed with USOC to obey the Amateur Sports Act, but Ms. Dunlap evidently persuaded him to make a test case out of USOC's insistence that he obey the law. Had the Gay Games (as they ultimately were called) gone forward in compliance with the Act as Dr. Waddell agreed before Ms. Dunlap came into the picture, USOC would not have sued. Whether Ms. Dunlap and her clients used the ensuing lawsuit as a pretext to convert the "Gay Olympics" into a cause for gay rights or whether the lawsuit grew out of the defendants' good faith effort to test the Act need not be determined by the Committee. The issue posed on my nomination is whether I acted properly as an advocate for one side in the litigation.

I. THE ALLEGATION OF IMPROPER CONDUCT REGARDING LIENS ON PROPERTY OF "GAY OLYMPICS" SPONSOR WADDELL.

Interestingly, the period during which Ms. Dunlap charged I delayed taking action on the liens was the Supreme Court phase of the "Gay Olympics" litigation. I was not litigation counsel for USOC in that phase. In November 1986, I was displaced as litigation counsel for USOC by Mr. Kester. Although it was contemplated that I would resume handling the case after the Supreme Court proceedings, if there were further proceedings in the trial court, and did contribute in a small way to briefing in the Supreme Court, I did not resume the responsibilities of litigation counsel until after the Supreme Court's decision on June 25, 1987.

Ms. Dunlap, who now charges that I delayed taking action on the liens, took no action with regard to the liens until a year after the appellate court decision in January 1986 vacating the attorneys' fees award which gave rise to the liens (781 F.2d 733). Ms. Dunlap wrote me a letter dated January 8, 1987 stating her view that my clients "continue to have liens on the real property holdings, including the house and residence, of my client, Dr. Thomas F. Waddell of San Francisco" (Exh. C: Dunlap Ltr., Jan. 8, 1987).* Ms. Dunlap's letter stated that the liens "appear as clouds on Dr. Waddell's title to his property, precluding him not only from alienating that property but from borrowing upon and/or improving it." The letter contained no evidence that Dr. Waddell in fact had tried to sell his property or borrow against it and Ms. Dunlap has never produced any such evidence.

---

* Ms. Dunlap's letter notes that my firm's name does not

(footnote continued)

The next day I acknowledged receipt of Ms. Dunlap's January 8 letter and referred the matter to USOC's trademark lawyers, asking them to advise how to handle Ms. Dunlap's inquiry (Exh. D: Walker Ltr., Jan. 9, 1987). In addition, I asked an associate attorney in my firm to study the law applicable to the issues raised in Ms. Dunlap's letter.

USOC's trademark lawyers and its new Supreme Court counsel, Mr. Kester, thereafter communicated with one another about Ms. Dunlap's inquiry but did not send copies of their exchanges to me. On January 15, Mr. Kester wrote Ms. Dunlap that he would be "willing to consider the matters raised in your letter of January 8 and shall do so as soon as your clients have paid their share of printing costs in the Supreme Court proceedings" (Exh. E: Kester Ltr., Jan. 15, 1987). I was not consulted about this response or the decision to link a response on the liens with payment of the printing costs.

By letter to Mr. Kester dated January 28, Ms. Dunlap indicated that the printing costs will be paid as soon as possible and threatened "to seek legal redress unless by February 15 USOC has acted to remove the liens" (Exh. F: Dunlap Ltr., Jan. 28, 1987). Ms. Dunlap did not send a copy of that letter to me and I did not receive a copy until Mr. Kester sent me one over a year later, February 12, 1988. Ms. Dunlap's failure to send me even a copy of her letter to Mr. Kester suggests that she knew by late January 1987 that the lien matter was out of my hands.

(footnote continued)

appear on Supreme Court documents, and hence questioned whether I continued to have responsibility for the litigation (Exh. C, p. 2). She apparently concluded that I did not because the January 1987 letter was her first, last and only communication with me about the liens.

On February 6, 1987, Mr. Kester wrote Ms. Dunlap that "we have asked trial counsel in San Francisco to check the status of the liens to which you refer and to advise us. After they have done so, we shall be in a position to respond further" (emphasis supplied) (Exh. G: Kester Ltr., Feb. 6, 1987). Mr. Kline and I received copies of this letter.

In the meantime, my associate completed his research and I forwarded his memorandum, which was dated February 6, 1987, to Washington, D.C. counsel in accordance with Mr. Kester's February 6 letter. I telephoned one of USOC's trademark lawyers on February 9 and relayed the results of our research so that he or Mr. Kester could respond further to Ms. Dunlap. I followed up with a letter sent by express mail on February 9, confirming my advice to the trademark lawyers, and sent a copy to Mr. Kester.

Thereafter, Mr. Kline and Mr. Kester exchanged draft responses to Ms. Dunlap's January 28 letter; again, copies of these letters were not sent to me. On March 13, 1987, Mr. Kester wrote Ms. Dunlap the following two-sentence letter:

> "Following up our previous correspondence, it is my understanding, and you as a member of the California bar may correct me if I am in error, that vacating or removing a lien is initiated by your client's filing an appropriate motion in the court in California. I would not anticipate that the plaintiffs [USOC and IOC] would oppose such action" (Exh. H: Kester Ltr., Mar. 13, 1987).

Mr. Kester did not at that time send a copy of this letter to me and I first received one in February 1988. Mr. Kester has told me that his files show no written response from Ms. Dunlap and he does not recall an oral one. I received none.

As far as I can determine, therefore, Ms. Dunlap took no further action to remove the liens in response to Mr. Kester's invitation to do so and statement that USOC would not oppose such action. Ms. Dunlap apparently did not further communicate with any USOC attorney on the subject. Yet press reports mentioning both Ms. Dunlap and Dr. Waddell that appeared after Mr. Kester's March 13 letter still referred to a lien on Dr. Waddell's property (Exh. I: Oakland Tribune article, Mar. 24, 1987).

I had no further communication on the liens until April 29, when USOC's general counsel in Colorado Springs telephoned about press inquiries which his office had received concerning liens on Dr. Waddell's property. I reiterated to the general counsel the conclusion I had conveyed to the Washington lawyers.

On May 19, I received a telephone call from a lawyer identifying herself as Judy Baer who said that she was performing estate planning work for Dr. Waddell and expressed concern about liens obtained by USOC on Dr. Waddell's San Francisco property arising out of the attorneys' fees award in the above litigation. Ms. Baer told me that she had communicated with Mr. Kester about the situation but did not feel that Mr. Kester's response adequately answered her concerns. She asked me for further information.

I reviewed the file, called my client the next day, further reviewed the matter on May 26 and on May 28, 1987 sent Ms. Baer a letter stating that the appellate decision which "vacated and remanded the fee award, also extinguishes the United States Olympic Committee's liens on Dr. Waddell's property" (Exh. J: Walker Ltr., May 28, 1987). The letter referred to "incorrect" press reports that the liens were still in effect and stated that Ms. Baer could advise Dr. Waddell that the liens are not effective, concluding that:

> "I should be happy to communicate USOC's position on the matter to anyone with a genuine need to have it."

Six weeks later and only two days before the reported date of Dr. Waddell's death, I received a hand-delivered letter dated July 9, 1987, from Ms. Baer who stated that:

> "I agree with you that the orders of the United States Court of Appeals for the Ninth Circuit on January 27, 1986, which vacated and remanded the fee award, also extinguished the United States Olympic Committee's liens on Dr. Waddell's property" (Exh. K: Baer Ltr., July 9, 1987).

Ms. Baer, however, disagreed that filing a copy of the Ninth Circuit's decision would "record officially that the liens are no longer in effect" and requested that I have USOC execute releases which she enclosed. Ms. Baer also had, and enclosed, a copy of a letter from USOC President Helmick to Baseball Commissioner Peter Ueberroth stating that USOC had no intention of ever attempting to collect from Dr. Waddell or on any of his personal properties. Receipt of Ms. Baer's letter was the first time I became aware of USOC's position on this score. I do not know how Ms. Baer obtained a copy of this letter. In response to Ms. Baer's letter, I sought and received from USOC its permission to execute the releases on its behalf and I had these hand carried to Ms. Baer on July 17, 1987 (Exh. L: Walker Ltr., July 17, 1987).

By virtue of her correspondence, Ms. Dunlap knew that the matter of the liens was in the hands of the Washington, D.C. lawyers. When she received from these lawyers word that if she took steps to remove the liens USOC would not oppose these steps, Ms. Dunlap evidently did nothing. When Dr. Waddell's other lawyer telephoned me later, she received a prompt written response telling her that neither she nor Dr. Waddell should have any concern that the liens were still in effect and she could use my letter as evidence. Still, this lawyer who later claimed to disagree with the analysis in my May 28 letter waited another six weeks (until two days before Dr. Waddell died) before doing anything.

This conduct by his own lawyers does not support Ms. Dunlap's claim that Dr. Waddell suffered adverse "psychological effects" due to the liens (Dunlap Subm. #2, p. 12). But if that were the case, Ms. Dunlap and Dr. Waddell's other lawyer bear responsibility. Ms. Dunlap evidently failed to act to remove the liens when given the go-ahead by USOC's Washington, D.C. lawyers. I advised Dr. Waddell's other lawyer that the liens were not effective and she had a written statement that USOC would not reinstitute action to collect its attorneys' fee award from Dr. Waddell's personal assets. Ms. Dunlap's present statements about my conduct cannot be reconciled with her own conduct and that of Dr. Waddell's other lawyer.

II. THE ALLEGATIONS OF MISREPRESENTATIONS LACK ANY SUBSTANTIVE BASIS.

In her presentation to the ABA committee, Ms. Dunlap identifies three types of alleged misstatements of fact and distortions of the factual record which I allegedly made in representing USOC. See Dunlap Subm. #2, pp. 3-7. The first of these is the claim that I misrepresented to the courts that Ms. Dunlap's clients were misappropriating Olympic symbols (id., pp. 3-6).

There was never any factual dispute that defendants used "Olympic" as the designation for their games and on merchandise sold to raise money for their activities. The preliminary injunction entered by Chief Judge Peckham tracked the language of the statute (36 U.S.C. § 380) and enjoined Ms. Dunlap's clients from "further use of 'Olympic' or 'Olympiad' or any confusingly similar word, term, name, trade name or any symbol, emblem, trademark or insignia" of IOC or USOC (219 U.S.P.Q. [Exh. B], at 987-988); the permanent injunction entered by Judge Vukasin imposed the same restriction. Ms. Dunlap now attempts to convert references in briefs and oral arguments to terminology, designations, symbols, insignia and trademarks along the lines of the Act into evidence that I made some kind of fake charge against her clients. Ms. Dunlap evidently believes that by referring to and seeking relief in terms of the statute, which admittedly covered wider misuse of Olympic designations than we had proved Ms. Dunlap's clients had committed, I implicitly accused her clients of misappropriating all the protected designations and symbols when her clients had not done so.

But Ms. Dunlap raised this point in the Ninth Circuit, which rejected it:

> "It is undisputed that [Ms. Dunlap's client] SFAA resumed use of the Olympics trademark without disclosure to the Olympic Committee. In this case the facts are undisputed and the district court correctly stated the applicable law. Furthermore, while a declaratory judgment might have sufficed, providing injunctive relief was not, given SFAA's past use of the protected words and symbols, an abuse of discretion. The injunction merely tracks the statute, and so is not overbroad" (781 F.2d at 737-739).

Ms. Dunlap, it appears, is simply attempting to relitigate in this forum issues disposed of by the courts.

Ms. Dunlap's second alleged misrepresentation is that I misrepresented that defendant Waddell had an intent "to remove the 'Gay Olympic Games' from the gay community"

(Dunlap Subm. #2, p. 6).* Ms. Dunlap again refuses to accept the courts' determinations and overlooks her own clients' admission. Chief Judge Robert F. Peckham of the Northern District of California, who issued the preliminary injunction, observed that "the Gay 'Olympic' Games are closely modeled on the Olympic Games in scope, content, ceremony and philosophy" (219 U.S.P.Q. [Exh. B] at 987). Judge Peckham expressly found that "the long range goal of the sponsors is apparently to sever the Games from their direct connection with the gay community altogether" (219 U.S.P.Q. [Exh. B] at 985). The Supreme Court also noted the similarities between the "Gay Olympics" and the Olympics:

> "The 'Gay Olympic Games' were to take place over a 9-month period and were to be held in different locations around the world. They were to include a torch relay, a parade with uniformed athletes of both sexes divided by city, an 'Olympic anthem' and 'Olympic Committee,' the award of gold, silver and bronze medals, and were advertised under a logo of three overlapping rings. All of these features directly parallel the modern-day Olympics, not the Olympic Games that occurred in ancient Greece. The image the SFAA sought to invoke was exactly the image carefully cultivated by the USOC. The SFAA's expressive use of the word cannot be divorced from the value the USOC's efforts have given it. The mere fact that the SFAA claims an expressive, as opposed to a purely commercial, purpose does not give it a First Amendment right to 'appropriat[e] to itself the harvest of those who have sown'" (97 L.Ed.2d at 450-451, 107 S.Ct. at 2983).

---

* Ms. Dunlap's charge seems directly at odds with one of the goals of the "Gay Olympics" which, in its president's own words, was:

> "3) To attempt, through athletics, to bring about a positive and gradual assimilation of gay men and women, as well as gays and non-gays, and to diminish the ageist, sexist and racist divisiveness existing in all communities

(footnote continued)

Of course, the Act did not require proof that Ms. Dunlap's clients' misuse of "Olympic" tended to cause confusion between their games and the Olympics despite Ms. Dunlap's clients' "clear attempt to exploit the imagery and goodwill created by the USOC" (97 L.Ed.2d at 451, n. 19, 107 S.Ct. at 2983, n. 19):

> "Congress reasonably could conclude that most commercial uses of the Olympic words and symbols are likely to be confusing. It also could determine that unauthorized uses, even if not confusing, nevertheless may harm the USOC by lessening the distinctiveness and thus the commercial value of the marks. * * *
>
> "In this case, the SFAA sought to sell T-shirts, buttons, bumper stickers and other items, all emblazoned with the title 'Gay Olympic Games.' The possibility for confusion as to sponsorship is obvious. Moreover, it is clear that the SFAA sought to exploit the 'commercial magnetism,' see Mischawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co., 316 U.S. 203, 205 (1942), of the word given value by the USOC. There is no question that this unauthorized use could undercut the USOC's efforts to use, and sell the right to use, the word in the future, since much of the word's value comes from its limited use. Such an adverse effect on the USOC's activities is directly contrary to Congress' interest" (97 L.Ed.2d at 450, 107 S.Ct. at 2982-2983).

Ms. Dunlap's charge that I falsely accused her clients of trying to remove the "Gay Olympics" from the gay community is finally undermined by her clients' responses to Requests for Admission: "[I]t is a long-range goal of the Gay Games to include athletic participation for all people regardless of athletic ability, gender, age, race or sexual orientation/preference" (Dunlap Subm. #3, Exh. L&M, p. 2).

Ms. Dunlap's third alleged misrepresentation is that I falsely accused the "Gay Olympics" sponsors of

---

(footnote continued)

regardless of sexual orientation" (97 L.Ed.2d at 448, n. 13, 107 S.Ct. at 2980, n. 13).

contemptuous conduct in using "Olympics" after entry of the preliminary injunction by Chief Judge Peckham on August 20, 1982. A copy of the allegedly offending declaration of my partner Robert A. Gordon is attached as Exhibit M. Attached to the declaration is a publication of SFAA in January 1984 which refers to plans for a "1986 Lesbian/Gay Winter Olympic Games"; this publication also makes reference to the 1982 events in San Francisco as the "Gay 'Olympic' Games."

USOC never brought contempt charges against Ms. Dunlap's clients. The Gordon declaration was submitted in connection with USOC's application for attorneys' fees. Ms. Dunlap never questioned the authenticity of the document as a publication of her client. The document, of course, speaks for itself.

"[M]ost seriously of all," Ms. Dunlap alleges that I repeated this misrepresentation by submitting to the court a photograph which falsely depicted her clients as using "Olympic" in connection with their 1986 games (Dunlap Subm. #1, p. 3). The declaration* that Ms. Dunlap relies on in making this allegation was not my declaration but that of Washington, D.C. co-counsel who, of course, represented the facts asserted to be true.

III. ALLEGED IMPROPER RELIANCE ON MATTERS OUTSIDE THE RECORD, INCLUDING A NEWSPAPER ARTICLE.

Ms. Dunlap asserts impropriety in my arguing "on the basis of a newspaper article" that her clients "were looking for trouble" (Dunlap Subm. #2, p. 8). There is no question that I submitted declarations which cited newspaper articles in litigating the "Gay Olympics" case. Submission of a wide variety of documentation is hardly an unprecedented practice in injunction litigation. See, e.g., Flynt Distributing Co., Inc. v. Harvey (9 Cir. 1984) 734 F.2d 1389, 1394. The particular item which appears to arouse Ms. Dunlap was a declaration by David Preston, a USOC press liaison officer; a copy is attached as Exhibit N. The article was cited for the proposition that Ms. Dunlap and her clients sought to precipitate a test case, a point that Dr. Waddell himself made. See, for example, Dr. Waddell's letter dated January 26, 1982, Exhibit O, page 2 ("Our organization is advised to seek formal resolution of this controversy by the filing and expedition of a federal civil action seeking all necessary declaratory, injunctive and other relief"). It is beyond question that in considering injunctive relief, courts have wide latitude to weigh various kinds of evidence (11 Wright & Miller, Fed.Prac. and Proc. (1973) § 2949, p. 471), including of course the contents of newspaper articles. Ms. Dunlap has produced nothing to suggest that in the "Gay Olympics" litigation the courts did not properly weigh the evidence before them to the prejudice of her clients.

---

* Consistent with 28 U.S.C. § 1746, the local rules in the Northern District of California allow declarations to be used interchangeably for affidavits (N.D.Cal.Local Rules 220-7).

Ms. Dunlap asserted to the ABA committee that I misrepresented to the court that USOC had engaged in negotiations with sponsors of games called the "Police Olympics" (Dunlap Subm. #2, p. 8); "Mr. Walker asserted without any evidentiary foundation that USOC was engaged in negotiations with The Police Olympics sponsors as to their use of 'Olympic'" (ibid.). Yet Ms. Dunlap's own client, Dr. Waddell, in a declaration submitted by Ms. Dunlap herself, acknowledged that the sponsors of "Police Olympics" had told him that USOC had sought to end use of "Olympic" by the "Police Olympics" (Exh. P, p. 7).

Significantly, the Supreme Court noted that: "The record before us strongly indicates that the USOC has acted strictly in accord with its charter and that there has been no actionable discrimination" (97 L.Ed.2d at 452, n. 22, 107 S.Ct. at 2984). The Court disposed of Ms. Dunlap's claim that USOC had singled out her clients for discriminatory enforcement:

> "As of 1982 when this suit began, the USOC had brought 22 oppositions to trademark applications and one petition to cancel. For example, the USOC successfully prohibited registration of the mark 'Golden Age Olympics.' The USOC also litigated numerous suits prior to bringing this action, prohibiting use of the Olympic words and symbols by such entities as the National Amateur Sports Foundation, a shoe company, the International Federation of Body Builders, and a bus company. Since 1982, the USOC has brought a number of additional suits against various

> companies and the March of Dimes Birth Defects Foundation. The USOC has authorized the use of the word 'Olympic' to organizations that sponsor athletic competitions and events for handicapped persons ('Special Olympics') and for youth ('Junior Olympics' and 'Explorer Olympics'). Both of these uses directly relate to a purpose of the USOC established by its charter. See 36 U.S.C. § 374(7), (13), reprinted ante, at ____, n. 17. The USOC has not consented to any other uses of the word in connection with athletic competitions or events" (citations omitted) (97 L.Ed.2d at 452, n. 22, 107 S.Ct. at 2984).

IV. ALLEGATIONS OF UNTIMELY FILINGS WITHOUT CONSENT OF COURT.

Ms. Dunlap alleges that papers filed in support of USOC's motion for preliminary injunction were untimely and that she "noted this prejudicial lateness in her opposition to the motion at oral argument" (Dunlap Subm. #2, p. 9). There was a flurry of filings in the days before the hearing on the preliminary injunction on August 19, 1982. The athletic competitions of Ms. Dunlap's clients were scheduled to commence nine days later. Courts acting under such time pressures almost invariably accept and consider all filings, rather than deny themselves evidence that would not otherwise be available (11 Wright & Miller, supra, pp. 471-472). In any event, Ms. Dunlap had her chance to reply to all of USOC's evidence but contented herself with the argument that it did not add up to a violation of the Act, a position rejected by Chief Judge Peckham at the outset of the litigation (219 U.S.P.Q. [Exh. B] at 986).

Ms. Dunlap's other claim of untimeliness relates to a failure to comply with a then new "meet and confer" local rule before making the motion for attorneys' fees (N.D.Cal. Local Rule 270-1). The rule seeks to have the attorneys resolve "all disputed issues" before bringing on motions for attorneys' fees. When the oversight was discovered, I promptly advised Ms. Dunlap, who declined an invitation to meet and confer on the ground that USOC was not entitled to any attorneys' fees as a matter of law. The Ninth Circuit dealt with Ms. Dunlap's claim on the subject:

> "Local Rule 270 of the Northern District of California requires that the parties discuss disputed issues relating to attorneys' fees and

> requires the movant to file declarations detailing the amount of time spent and the qualifications of counsel. SFAA argues that plaintiffs' breach of this rule bars them from claiming fees. However, SFAA's representatives refused to meet with plaintiffs for the purpose of supplying the information required by the local rule, apparently because they feared that this would compromise SFAA's position that no attorneys' fees should be awarded. Under the circumstances, we regard the district court's rulings as an implicit finding that there had been a waiver of the local rule. In light of subsequent affidavits providing further information, the district court's ruling is not clearly erroneous, and must be accepted" (781 F.2d at 739).

V. ALLEGATIONS OF IMPROPER CONDUCT REGARDING THE 1987 MOTION FOR ATTORNEYS' FEES.

Ms. Dunlap charges that I acted improperly in renewing USOC's motion for attorneys' fees against the corporate sponsor of the "Gay Olympics," but not the estate of Dr. Waddell after the Supreme Court's decision on June 25, 1987. This renewed motion was made pending the outcome of efforts to settle the issue. I initiated those efforts and Ms. Dunlap, of course, was party to the discussions. Her letters acknowledge the cooperation and effort that I and my colleague on the case were making to resolve it (Exh. Q). These contemporaneous documents do not square with Ms. Dunlap's statements to the ABA Standing Committee. It is interesting, in this regard, that being advised that the case had been resolved did not alter Ms. Dunlap's views on anything (Dunlap Subm. #1, p. 4).

CONCLUSION

Most of Ms. Dunlap's charges against me were addressed by the courts in the context of the "Gay Olympics" litigation and these were resolved against her position. Her charges on USOC's liens simply do not hold up.

I trust that this letter adequately addresses whatever concerns Ms. Dunlap's charges may have raised with you and members of the Committee.

Very truly yours,

Vaughn R. Walker

cc: Mr. Ira Goldman
Honorable Stephen J. Markman
Harold Tyler, Esq.

RICHARD G. KLINE
COUNSELOR

ROBERT H. HELMICK
PRESIDENT
DR. EVIE G. DENNIS
VICE PRESIDENT
STEPHEN B. SOBEL
VICE PRESIDENT
WILLIAM B. TUTT
VICE PRESIDENT
ANDRAS TORO
SECRETARY
HOWARD C. MILLER
TREASURER
WILLIAM E. SIMON
IMMEDIATE
PAST PRESIDENT

March 4, 1988

Vaughn R. Walker, Esq.
Pillsbury, Madison & Sutro
225 Bush Street
P.O. Box 7880
San Francisco, California 94120

Re: San Francisco Arts & Athletics Litigation
Our File Nos. 91673-405A and 91673-405B

Dear Vaughn:

Your request of February 15, 1988, for release of certain privileged material associated with the San Francisco Arts & Athletics litigation, was referred to me yesterday as the chief legal advisor of the Olympic Committee, for a response.

As a matter of general corporate policy, the USOC consistently has maintained our attorney-client work product privilege in connection with all materials involved in any litigated matter. If the privileged and confidential nature of this information is waived for selected materials, the litigation file may be vulnerable to subsequent disclosure of the entire contents. Your request has been discussed with the USOC President, Executive Director and Treasurer, who concur that the Olympic Committee should not deviate from this policy.

Collectively, the privileged material reflects general legal issues regarding the USOC's rights, and USOC internal policy considerations, as well as specific legal action taken on your advice. While I agree that there is nothing to hide in a factual sense, it is important as a policy matter to insist that all privileges be maintained with regard to litigation material. Of course, there are quite a few documents which reflect communications between yourself and the attorney for defendant, Mary Dunlap. Obviously, that correspondence and the attachments thereto are not privileged and the Olympic Committee has no objection to your releasing them.

I understand your concern over the unwarranted and unfortunate personal attacks being made upon you in the San Francisco press and by some organizations in the Bay area. I know, and everyone associated with the case knows, that you have acted in an exemplary, professional manner, and the accusations

ONE FARRAGUT SQUARE SOUTH, 7TH FLOOR
WASHINGTON, DC 20006
(202) 383-5200

raised in the press are untrue or are distortions of the truth. Consequently, the Olympic Committee would be willing to issue a statement in your support, both praising your legal ability and clearly delineating your line of authority.

You recommended settlement of the case after mid-August, 1987, in an effort to avoid the need to pursue an award for attorney's fees and damages against the defendants. We concurred in that settlement, and only the unrealistic demands and expectations of our adversary delayed resolution. That settlement is almost entirely to the benefit of the defendants, giving the Olympic Committee nothing more than they had already obtained through the litigation to which they were forced by the defendants' actions. The delay was caused by Ms. Dunlap's early suggestions that the Olympic Committee abandon its judgement and dismiss its case with prejudice.

I am somewhat surprised at Mary's present attacks upon you, since she knew that you were recommending a settlement which would avoid burdening her client with an award of attorney's fees. Indeed, in her letter of September 22, 1987, to you she thanked you "for your courtesy and diplomacy" in helping her client avoid the potential exposure to a major monetary award in the action - a courtesy she again acknowledged on October 19, 1987, in a letter to John Hanson, and October 22, 1987, to both you and John. Since Mary acknowledged in her correspondence that you had no authority to settle the case, but that you had recommended settlement to the client on terms negotiated with her, I do not see how she can, in good conscience, attack you now.

Please give me a call so that we can discuss this matter if you have any questions, or if you wish the Olympic Committee to issue a statement endorsing your actions and acknowledging your recommendation to settle.

Once again, congratulations on the honor which has been given you and I wish you Godspeed and swift confirmation.

Sincerely,

Richard G. Kline

Richard G. Kline

ETC:RGK:ka
cc: USOC

MARY C. DUNLAP
ATTORNEY AT LAW
1509 DOLORES STREET
SAN FRANCISCO, CA 94110
(415) [illegible]-6555

April 7, 1988

TO: Mr. Steven J. Metalitz
Chief Nominations Counsel
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
Washington D.C. 20510-6275

RE: Your Letter of 4/1/88 and
Vaughn Walker's Letter to You
of 3/25/88

Dear Mr. Metalitz,

Enclosed is a memorandum and exhibits in reply to Mr. Walker's letter to you, in which he responds to my allegations to the ABA Committee on the Judiciary. You and the Judiciary Committee are authorized by me to use my reply in whatever ways serve the legitimate purposes of the Committee.

I reiterate here what I told Samuel Williams when I sent the first memo; it is a joyless task, to have to offer such severe opinions as to the non-qualifications of a colleague for the bench. However, Mr. Walker's denials and evasions in his letter to you of 3/25/88 deserved my fullest and most thoughtful reply. It is enclosed.

If you need any further materials or information from me, I will do my best to respond. Thank you for taking this matter as seriously as it warrants.

Best regards,

Mary C. Dunlap

MARY C. DUNLAP

Postscript: Because mine is a humble law practice, I did not make duplicates of these materials for members of the Senate who may wish copies. I assume you will provide that service, and thank you in advance for doing so.

TO: Steven J. Metalitz, Chief Nominations Counsel
Senate Committee on the Judiciary

FROM: Mary C. Dunlap, Attorney

RE: REPLY TO LETTER OF VAUGHN R. WALKER TO YOU DATED 3/25/88

DATED: April 7, 1988

I. THE LIENS FOR ATTORNEYS' FEES

1. Mr. Walker proposes to present the matter of the $96,600. attorneys fees award and the lien on Dr. Tom Waddell's residence in a context of normalcy, as if such enormous and unprecedented awards against little nonprofits and volunteers who are seeking to vindicate constitutional claims were an everyday, routine element of civil law. For example, Mr. Walker states that the lien was recorded to protect USOC's ability to collect the award "[b]ecause the attorneys' fees were not paid during the appeals...". (VW p. 1)[1]

In my sixteen (16) years of civil rights practice, I have never heard of an attorney fee award being paid by a party claiming to be a victim of underlying deprivations of constitutional rights, including discrimination, during an appeal. Nor do I know of a single instance, other than the "Gay Olympics" case, where the party accused of discrimination, upon prevailing below, sought to execute on an attorneys fees award before the appeal was disposed of. Moreover, the award of attorneys fees against SFA&A and Dr. Waddell was wholly unprecedented. The opinions of both the District Court and the Court of Appeals concerning the attorneys fees award show a complete absence of cases near point; this absence of precedent appears to have been a significant part of the reasoning of the Court of Appeals in vacating and remanding it for Judge Vukasin's reconsideration of grounds, 781 F.2d 733 (9th Cir. 1986). It is disturbing to imagine if every time a defendant offering a first amendment or fourteenth amendment defense in a civil rights case were to have a $96,600. lien placed upon his home, clouding his/her title unless and until he/she gave up the cause. Mr. Walker's effort to paint this picture as a normal civil rights litigation scene is dishonest.

2. In my opinion, the purpose of the attorneys fees award and of the lien on Tom Waddell's residence was not to pay USOC --- it was to coerce Tom Waddell and SFAA to give up their appeals and to quit hollering about discrimination against them by USOC. No other noncommercial defendant had ever fought USOC so hard and so long, and USOC had suffered a sheaf of nationwide adverse publicity about its attack on the "Gay Olympics". (See samples enclosed, as Exhibit A hereof).

My assertion that the purpose of the attorneys fees award and the lien was not to remunerate USOC, but to coerce defendants to give up the fight for use of the name "Gay Olympics", is based upon facts, as follows:

A. First, there is the apparently undisputed fact that USOC is worth about 1/2 billion dollars, that it recovered over $75.

---

[1] References herein to "VW" are to the letter of Vaughn Walker to Mr. Steven J. Metalitz dated 3/25/88.

million in profits from the 1984 Games. USOC no more needed to be reimbursed for its alleged $96,600. by a tiny non-profit and its chief volunteer than USOC needed to put Tom Waddell through a debtor's examination and to ask him hours of personal questions about his finances (eg. who paid for the expenses of his child?), and to seek execution on the judgment against Tom Waddell's home, pending appeal (which execution Mr. Walker pursued, and which execution Judge Vukasin was ready to permit, despite the wholly unprecedented nature and the spurious grounds of the attorneys fees award (see Exhibit B, attached, showing Judge Vukasin's denial of a stay of execution, which a majority of an appellate motions panel ultimately reversed, by granting a stay (Judge Clifford Wallace dissenting));

B. Then there is the fact, according to Mr. Walker himself, that USOC particularly valued making an example of SFAA and Dr. Waddell to deter other potential infringers, no matter what the cost might be of this "bad-guy prototyping" of Dr. Waddell and SFAA (see Exhibit C, a copy of my rough notes from a telephone conversation between Mr. Walker and myself in November 1984, during which Mr. Walker rejected my client's offer to drop their defenses and counterclaims and dismiss the litigation in exchange for a waiver of fees). The idea that the attorneys fees award and lien in this case were a normal, necessary result of USOC's legal position in the case is an outrageous distortion of the facts. USOC, with Mr. Walker at the helm of its legal strategy, sought to crush Tom Waddell, by means of the $96,600. lien, by means of all of their real and substantial efforts to enforce the judgment (which almost succeeded, but were turned aside at the last minute by a granting of a stay) so that Tom and the SFAA Board would give up the battle for the "Gay Olympics" name.

3. Mr. Walker's letter offers the legally and morally insuppertable premise that, once the Ninth Circuit ordered the judgment as to attorneys' fees vacated and remanded, on January 27, 1986, he had no responsibility to remove the lien (even though there was no longer a judgment in favor of his clients to secure by it), and the responsibility to remove the lien rested upon Dr. Waddell and his counsel, including myself.

That premise is simply wrong. The lien was put on the property by attorneys for USOC, including Mr. Walker; it was, literally, USOC's lien, recorded as such in the County Recorder's office in San Francisco. Once the Ninth Circuit vacated and remanded the attorneys fees award, there was nothing left for the lien to secure, and I told Mr. Walker this when I telephoned him shortly (within a week or two) of the Court of Appeals' decision that was issued on January 27, 1988, to discuss settlement of the action. I had proposed settlement in a letter to Mr. Walker written the day after the Ninth Circuit had ruled. (See Exhibit D, attached). The fact that I sent it so promptly was due to my clients' (including Tom Waddell's) tremendous anxiety about the presence of the lien, and about the threat of USOC coming in and taking SFA&A's budget, which was being raised to put on Gay Games II. Despite my belief (with which, I respectfully observe, four members of the U.S. Supreme Court and three Ninth Circuit Judges agreed) that my clients were being legally wronged and deprived of sacred constitutional rights, I proposed in behalf of my clients that if USOC gave up its now-all-the-more-obviously-questionable claim for attorneys fees (the Ninth Circuit having ruled that Judge Vukasin's findings that my clients had wilfully, deliberately, fraudulently or maliciously infringed the mark were unfounded), my clients would stop litigating their claimed right to use "Gay Olympic Games". This position was the direct result of the coercive financial tactics of USOC and Mr. Walker. My clients could not afford nor handle the distress of the lien on Tom's property, and Tom himself very much feared loss of his home. (This fact can be verified by his probate attorney, Ms. Baer, identified below).

On the occasion in late January or early February when I called Mr. Walker about the lien and about settlement prospects, I recall that Mr. Walker disagreed with me about my assertion that the lien should be immediately removed. On that and other occasions, Mr. Walker asserted a right by USOC to leave the lien in place unless the court removed it (ie. unless we prevailed below, in front of a judge (District Judge John P. Vukasin), on the issue of attorneys fees, when Mr. Walker was fully award that Judge Vukasin had shown an extreme disposition to give USOC and Mr. Walker whatever they asked him for, and to treat my clients and myself rudely, peremptorily and --- above all --- to give us nothing we asked for (not even a stay of execution to prevent sale of Tom Waddell's residence to pay the fees back in 1985).[2]

4. Mr. Walker's claim that "Ms. Dunlap took no action on these liens for over a year after the time they became not effective" (VW 3) is a complete falsehood, as Mr. Walker knows. I spoke with him by telephone about my position that the lien should be immediately removed, within a week or two of the Ninth Circuit's decision. He did not agree with me about immediate removal, but he told me he would look into the matter. I pursued him on the point for months, as he procrastinated and evaded me. Finally, Mr. Walker sent me on a wild goose chase, by[3] telling me that the attorneys in Washington D.C. were in charge of the question of the lien. Those attorneys took the position that before they would even discuss the lien (this was months after the fact that Tom had AIDS had been widely publicized), we must first pay an outstanding cost bill. Then, after ACLU paid the cost bill, USOC's attorney in Washington D.C., Mr. Kester delayed another month, purportedly to have San Francisco counsel "check the status of the lien" which I had told Mr. Kester remained on the property, and, in mid-March 1987, gave me essentially the same evasive, non-responsible answer on the lien that Mr. Walker had given months before (ie. if we wanted to move for a removal of the lien before Judge Vukasin, counsel "would not anticipate that the

---

[2] I suspect, although I cannot prove, that Mr. Walker must have been aware not only of Judge Vukasin's extreme hostility in his treatment of Tom Waddell's "Gay Olympics" cause, reflected in Judge Vukasin's tone, manner and statements in hearings on the case and in his rulings, but of Judge Vukasin's written opinion issued and published in 1968 (See Exhibit CC, attached), in behalf of the California Public Utilities Commission, rejecting advertising in the Yellow Pages for gay rights groups, in which Judge Vukasin called gay people criminals and perverts, likening us to drug addicts and prostitutes. When (in late 1986, after the Supreme Court took review) Vaughn Walker told me I could take the matter of the lien to Judge Vukasin, I believe Vaughn Walker had to know that it was tantamount to telling me, and by derivation my client Tom Waddell, to go to the devil.

In my professional opinion, Judge Vukasin would no more have ordered the lien removed from Tom Waddell's home, based on any motion I could make and absent direction from a higher court on the subject, than he would have foregone taking the action that enabled it to be put there to begin with. The fact that the law should have obliged Judge Vukasin to order the lien removed would be no solace in making any such motion, for Judge Vukasin had shown no interest in any legal argument favoring SFAA or Dr. Waddell up to that point.

[3] My confusion about which of USOC's many sets of attorneys were authorized to remove the lien was fairly based in a series of mixed signals given to me from Mr. Walker about who was handling the case, and about who was representing USOC, once it got to the Supreme Court; thus I was not certain which of the attorneys were in charge of the lien, at any stage. (See Exhibit K, attached.)

plaintiffs would oppose" us. (See Exhibit E, attached.)

Having made efforts for over a year to have Mr. Walker act to remove the lien, as of mid-March 1987 (in the midst of a Supreme Court appearance and other pressing matters), I turned the matter of the lien over to Dr. Waddell's estate attorney, Judy Baer, whom I hoped might get through to Mr. Walker on some sort of human basis, as I obviously had failed to do. She, being Tom's private attorney, was close to Tom's suffering with AIDS, and I frankly hoped Mr. Walker might listen to her as he had not listened to me. Instead of immediately executing the simple one-page document that ultimately removed the lien, Mr. Walker first continued to argue to Ms. Baer that we should make a motion to Judge Vukasin; when she rejected the professional and legal effectiveness of that course (as I had done, before her), Mr. Walker then convinced Ms. Baer to try to file a copy of the Ninth Circuit's 12-page-long opinion with the County Recorder to "remove" the lien; the Recorder refused to do so. Over a year and one-half after I first contacted Mr. Walker about the lien, and several months after Ms. Baer first did so, and a few days after Tom died, Mr. Walker signed a document to remove the lien, on or about July 17, 1987.

I observe that since the lien was being maintained for its coercive effect in the litigation (see part 2., above), Mr. Walker had every reason to delay removal of the lien while we prepared a motion for rehearing and suggestion for en banc review (in February 1986) and a petition for certiorari (in fall 1986); he and his clients still intended to intimidate Tom Waddell and the SFAA Board into dropping the next appellate steps. The posture Mr. Walker took, after the Ninth Circuit had vacated the attorneys fees award, when I offered in behalf of my clients to drop our defenses and constitutional counterclaims in exchange for a waiver of any alleged claim to fees, shows that he continued to seek to drive the defendants out of the litigation by making Tom Waddell (and the other volunteers on the non-profit SFA&A Board of Directors) feel that they would pay dearly if we continued to fight for the "Gay Olympics" name in court. (See Exhibit D).

5. Mr. Walker's idea that the lien "became not effective" (VW 3) at any point prior to the time that he finally sent a letter to Judith Baer, several days after Dr. Waddell died, specifically authorizing removal of the lien, is a legal fantasy. The lien remained on Tom's residence, in full force and effect for the entire period from its recordation in the SF County Recorder's office until Mr. Walker finally sent the letter at Judy Baer's request (see above). While the lien pended, after the Ninth Circuit's decision vacating the judgment it purported to secure, when Tom and Sara Lewinstein (who was married to Tom and had a child with him) sought to borrow money on the residence, they were disallowed. Sara confirmed this fact recently; Tom had told me of it a couple of times, as I tried to get Vaughn Walker to do something authoritative to remove the lien. These facts can be double-checked by contacting: Judith Baer, Attorney, 3929-24th Street, San Francisco CA. 94114 (telephone: 415-821-6700); Ms. Baer also has copies of correspondence between herself and Mr. Walker, showing that his document authorizing removal of the lien was not sent until after Tom died.

6. Mr. Walker's assertion that "[b]ecause of [Mr. Walker's] ...action, Dr. Waddell should have known well before his death that the liens were ineffective if Ms. Dunlap and his other lawyer truthfully communicated with him" (VW 3) is ridiculous. Mr. Walker took no effective action to remove the lien until after Tom died. Mr. Walker's statements along the way, before Tom died, that the liens were not in force, were both factually false and legally unenforceable.

Both Ms. Baer and I were completely truthful in advising Tom, at all times. Mr. Walker's insinuation to the contrary is absurd. The fact remains that USOC had gone after Tom's home, in an almost unprecedented tactic in civil rights litigation, and had almost succeeded in executing on his property, and then had successfully tied it up with a lien that was not removed until Mr. Walker took action removing it. Of course, both Ms. Baer and I sought to reassure Tom that we believed that the lien was theoretically invalid and that it would be removed, but both of us were helpless to remove it without Mr. Walker's affirmative act (see part 3., above, for reasons that we did not unilaterally seek "relief" from Judge Vukasin, under all of the circumstances).

Moreover, why should Tom have been reassured by assertions from Mr. Walker that the lien was not in effect, when Tom himself had sought to borrow money on his land and had been refused, because of the lien? Why should Tom have any real confidence that USOC and Mr. Walker would not continue to try to run him, his estate and every other person associated with the "Gay Olympics" cause into the ground, as long as we continued litigating and speaking up about SFAA's and Tom's rights, just as they had consistently done so far? Weren't Tom's suspicions warranted, given that after USOC President Bob Helmick, faced with a wave of adverse publicity about USOC's lien on the house of a sports hero dying of AIDS, denied that USOC was going after Tom or SFA&A for money, USOC turned around in October 1987 and filed a motion for $280,000. attorneys fees against SFAA, making the same kind of false claims of contempt and violations of court orders that had gotten the first award? (See MCD Memo to ABA Committee p. 12 and corresponding exhibit.)

7. Mr. Walker wants the matter both ways: he wants to be able to use unusually coercive and merciless tactics in litigation, and then to blame their effects upon others. He left the lien in place from January 27, 1986 (when the Ninth Circuit vacated the judgment) through July 17, 1987 (when he signed a document authorizing removal of the lien); Tom Waddell was diagnosed with AIDS in August, 1986, and there was wide publicity of this fact by fall 1986. Mr. Walker left a lien on a dying man's property, months after I first urged him to remove it. Mr. Walker now knows how bad this looks, so he seeks to blame Ms. Baer and myself for his groundless obstinacy and his impoverished ethical choice.

It is very like Mr. Walker's two voices about Tom Waddell. To the courts, Mr. Walker asserted that Tom was a wilful, deliberate, fraudulent, malicious, devious, flagrant and calculating trademark thief, who stole the word "Olympic" from USOC and continued to use "Olympic", even after being ordered not to do so, and who should be personally liable for $96,600. and should have his property executed upon, before disposition of an appeal from the award, for his reprehensible actions. To the outside world, particularly the part of it in San Francisco that mourns the loss of Tom to AIDS and is confounded by Mr. Walker's nomination to U.S. District Court, Mr. Walker claims "...Dr. Waddell was a fine guy who was a significant contributor to the community. I never to my knowledge said anything expressing any antipathy toward him." (See Exhibit F, attached.)

II. CAUSATION OF THE "GAY OLYMPICS" LAWSUIT

Mr. Walker claims that "Ms. Dunlap---not Dr. Waddell--precipiated this lawsuit." (VW 4) This is amazing. First of all, it is USOC and IOC that sued Dr. Waddell and SFAA. It is USOC and IOC, not Tom or myself, that had a precipitant and causative choice --- USOC and IOC could have granted permission to the Gay Games to use "Olympic", as they have done with the Special, Junior and Explorer Olympics, or they could have looked the other way as "Gay Olympic Games" joined the popular Olympic family of nonprofit athletic events, alongside the Police Olympics, the Armenian Olympics, the NAACP Olympics, the Eskimo-Indian Olympics, and all the dozens of other nonprofit, essentially noncommercial users that USOC has never sued. Instead of either of these choices, USOC elected to sue Tom Waddell and the nonprofit group that put on Gay Games I and II. The idea that "Ms. Dunlap ... precipitated this lawsuit" is simply a clear case of blame the victim's attorney (now that the victim has died of AIDS, and it is no longer popular to blame him personally).

Fortunately, there is evidence from Tom, sworn to in 1982, on the development of the litigation. I attach a copy of Tom Waddell's declaration on how the litigation happened, from his vantage point. (See MCD Memo to ABA Committee, at Exhibit A thereof). As Tom's declaration makes clear, an ACLU attorney told him that they did not believe USOC ever would sue the founders of the Gay Olympics. I had a slightly different opinion as of January 1982, which I conveyed to Tom and others; I believed USOC might sue. After all, they had sued a little nonprofit, Stop the Olympic Prison, for using "Olympic" and the rings back in 1980; it was their first reported "enforcement" action under the 1978 Act, that I could find. I advised Tom that I believed SFAA was being discriminated against and censored unconstitutionally, and I told Tom that there was an option for SFAA to commence litigation, and, as a plaintiff, to seek declaratory relief; the ACLU advisor disagreed with this approach, and Tom chose to accept the ACLU advisor's position. So, by Mr. Walker's theory, the lawsuit was precipitated by the ACLU attorney. (But, that person also has died of AIDS. Perhaps Mr. Walker knew this person, and now does not want to appear to attack or blame him, either.) By advising Tom that his organization had rights that we believed were being violated, I suppose it could be argued that we "precipitated" the lawsuit, to the same extent as any defendant's attorney who advises him/her that her/his chosen course of action appears to be legally justified, after which he/she gets sued. This is a farfetched way of analyzing why the "Gay Olympics" matter turned into a suit, however.

I believe that the lawsuit was precipitated, pure and simple, by USOC's choice to litigate against the "Gay Olympics". We offered to put a disclaimer on all uses of "Olympic"; USOC's attorneys rejected that offer on February 22, 1982, and then (without another word) lay in wait for 5 months, while my clients used the word "Olympic" widely, and then USOC rushed into Court in August 1982, on the eve of the "Gay Olympics", and sought injunctive relief. The full exchange of letters on the subject may prove illuminating to the Committee: I have attached them. (See Exhibit G, attached. As Tom Waddell's declaration explains, the 1/18/82 letter offering to forego use of "Olympic" was written "because our committee felt threatened and uncertain of our rights. We decided as an interim measure and in a spirit of legal compromise, to drop the word 'Olympic' while we sought legal counsel." (See Exhibit A p. 5 to MCD Memo. to ABA Committee.)

Another equally plausible and consistent theory of causation of the "Gay Olympics" lawsuit requires a bit more history. In 1968, Tom Waddell placed 6th in the decathlon in Mexico City, and raised his fist in solidarity with two by-now-famous black athletes. This was the first of many times that Tom Waddell would disagree deeply and sharply with one Don Miller, who in 1968 and in 1982 was involved in Olympic governance. Tom and Don also had heated words about the Vietnam War --- Colonel Miller threatened to have Tom (a doctor, drafted to go to Vietnam, who was refusing to do so) court-martialed for Tom's anti-war position. Tom and Don also argued about the USOC's treatment of "homosexuals"---Tom believed that USOC had warrantlessly fired a coach for being gay, and Tom sought to raise gay rights issues at committee meetings. Don ardently disapproved. In 1981, it was Colonel Don Miller who was Executive Director of USOC, to whom Tom wrote for permission to use "Olympic". By these facts, a theory of causation of the "Gay_Olympics" litigation emerges, about the deep political and personal differences of Tom Waddell and Don Miller, which has absolutely nothing to do with "Ms. Dunlap" (VW 4), nor with my legal advice as to Tom Waddell's and SFAA's constitutional rights (in which I still believe, and in which four members of the U.S. Supreme Court agreed, in significant part).

Mr. Walker's inference that the testing of gay people's rights under the Amateur Sports Act was not in good faith (VW 4) is not worth ennobling by a reply. My record in this litigation, as well as my clients' intentions in using "Olympic", speak for themselves. (See Exhibits A and P to MCD Memo to ABA Committee.)

III. THE MISREPRESENTATIONS OF FACT BY MR. WALKER

The record remains clear that Mr. Walker told the courts that SFAA and Dr. Waddell were misusing Olympic symbols, when there was no evidence of this, and when the misrepresentation was calculated to present SFAA and Tom as willful trademark infringers. If any courts were persuaded that SFAA used "symbols", as the opinions do suggest, this is nothing but a tribute to the prejudice that Mr. Walker's misrepresentations accomplished.

The record also is plain that Mr. Walker misstated Tom Waddell's intent concerning removing the Gay Games from the gay community. Nothing could be plainer than that Tom denied this intent, in a request for admission squarely on the point, after which Mr. Walker turned around and argued the opposite. (MCD Memo to ABA Committee p.6 and Exhibits K through O thereof.) Tom's factual denial was disregarded by Mr. Walker because it did not serve Mr. Walker's purpose, again, to color Tom Waddell as a deliberate trademark thief. To overcome this obvious anomaly in the record, Mr. Walker seeks to argue that because the Gay Games sponsors adopted and used policies of nondiscrimination, welcoming athletes of every age, race, sex and sexual orientation to the Gay Games, that non-discrimination proves that the real intent of the sponsors was to remove the Games from the gay community, Tom Waddell's sworn denial to the contrary notwithstanding. This is like arguing that when the National Organization for Women decided to welcome men as members, NOW sought to remove itself from the feminist community, or that, whenever the NAACP or MALDEF holds an event including people of every race, they are severing their racial ties and abandoning their pro-minority charters. Meanwhile, the evidentiary record shows clearly that Mr. Walker misrepresented Tom's intent, in no uncertain terms, in order to accomplish the purpose of characterizing Tom as someone who stole something that USOC claimed to own.

Finally, the matter of Mr. Walker's accusations of SFAA's contemptuous behavior is very interesting. The record shows that Mr. Walker did make the charges and accusations as set forth in my memo to the ABA Committee. (MD Memo. to ABA Committee, pp. 6-7 and Exhibits P and Q thereof). The publication referenced by Mr. Walker (VW 12) is poorly copied in the attachment to the Gordon declaration; thus, I provide an original of the document. (See Exhibit H, attached). A brief perusal of it readily establishes the absence of any contemptuous behavior by Tom, SFAA and others.

It is correct, as Mr. Walker states, that "USOC never brought contempt charges against Ms. Dunlap's clients". (VW 12). That is a key part of my point about Mr. Walker's ethics. If there were a basis for a contempt charge (which there never was), the only way my clients would be afforded due process in responding to it would be for Mr. Walker to make it, directly, forthrightly, by properly noticed motion with supporting factual materials. Instead, Mr. Walker accused my clients of "willful misconduct" and "contemptuous" action in the wholly inappropriate context of a memorandum in support of attorneys fees. (MD Memo to ABA Committee, p. 7 and Exhibits P and Q). The prejudicial context of these allegations had its effect in Judge Vukasin's vocally hostile attitude toward me and my clients at the hearing on attorneys fees, and in Judge Vukasin's ruling; Mr. Walker's unwholesome tactic of making a false accusation of contempt accomplished the desired purpose of slanting the court against our position on fees.

It is also correct that the last declaration in which my clients were falsely accused of misconduct (a declaration that was utterly false, and that was rebutted by witnesses in opposition to the motion for attorneys fees in November 1987, after which the motion was withdrawn) was not signed by Mr. Walker. However, his tactic of falsely accusing my clients of misconduct and then asking Judge Vukasin for a huge monetary award against them was traced and repeated in that last motion; he was the mentor of the motion, whoever was its author.

IV. THE POLICE OLYMPICS AND NEGOTIATION WITH POLICE

Mr. Walker claims that there was evidentiary support for his assertion that USOC was negotiating with the sponsors of the Police Olympics as to use of "Olympic" by the police. (VW 13) His evidentiary support is Tom Waddell's declaration, which is devoid of support for that position, stating only that the police and Armenians have gotten letters from USOC (as have dozens of other groups, according to USOC's counsel, Mr. Kline) asking them to desist from using "Olympic".(See Exhibit A to MCD Memo to ABA Committee). Our position was and is that USOC treated the Police Olympics differently than the Gay Olympics; in response in 1982, Mr. Walker told Judge Peckman that USOC was negotiating with the Police Olympics people. If that was a truthful and good faith response by Mr. Walker in 1982, despite its obvious lack of a record basis when Mr. Walker offered it, why have the Police Olympics enjoyed 7 years of use of the word Olympic since that hearing on preliminary injunction, unobstructed by anything resembling the litigation that the Gay Olympics founders suffered? (See Exhibit J, attached).

Mr. Walker states that I am seeking to "relitigate" the case when I offer these observations. (VW 9, 13-14) That characterization wholly misses the relevance of these points. It is Mr. Walker's honesty, ethics, obedience to court rules, and compassion that are the issues here, and his misleading representations, not founded in the record, to a court of law in litigation, offered to disguise and conceal discrimination by his client, USOC, between treatment of the Police Olympics and the Gay Olympics, directly pertain to these issues of Mr. Walker's judicial qualifications.

V. UNTIMELY FILINGS

The record on these points shows that Mr. Walker, having the resources of a giant law firm at his disposal, papered my porch with untimely filings in August 1982, and, in 1984, filed a motion for attorneys fees without the requisite factual support, filing the declarations that supported it in a reply, after my opposition was due. By themselves, these may seem small points. In considering the disingenuous and expedient nature of Mr. Walker's overall effort to make it sound as if he litigated the "Gay Olympics" case with good ethics and sound compassion, I think these small points matter.

#4

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS

STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 27, 1988

Judith Baer, Esq.
3929 24th Street
San Francisco, CA 94114

Dear Ms. Baer:

On June 13, 1988, the Senate Judiciary Committee held a hearing on the nomination of Vaughn R. Walker to be United States District Judge for the Northern District of California. During this hearing, the nominee was questioned extensively concerning his conduct in the litigation of the case of International Olympic Committee v. San Francisco Arts and Athletics, Inc.. Some of the questioning concerned his contact with you, as the personal attorney for Dr. Thomas Waddell, concerning the status of liens which had been placed on Dr. Waddell's property in connection with the award of attorneys' fees in this litigation. I write on behalf of the Committee to solicit your comments on this issue.

Enclosed please find the transcript of the June 13 hearing. The testimony of the nominee and witnesses concerning the nominee's conduct in the above-referenced litigation may be found principally on the following pages: 51-83, 96-98, 111-127, and 144-157. Please review this material and furnish the Committee with whatever written comments you consider appropriate, particularly with respect to the representations made by the nominee and the witnesses about your discussions and correspondence with Mr. Walker on the matter of the liens.

It would also be helpful if you could prepare for the Committee a brief narrative statement of your contacts with Mr. Walker concerning the liens, the position of his clients with respect to the lien, and the procedure for resolving questions about Dr. Waddell's title to this property. Please include in this statement a summary of your telephone conversations and correspondence with Mr. Walker, and any conclusions you may have reached as a result of these contacts concerning the nominee's character, temperament, and suitability for service as a United States District Judge.

Please send your comments and statement to the Senate Judiciary Committee, SD-224 Dirksen Senate Office Building, Washington, DC 20510, to the attention of Steven J. Metalitz, Chief Nominations Counsel. If you have any questions about this request, please contact Mr. Metalitz at (202) 224-8191.

Your written submission should be valuable to the Committee in evaluating Mr. Walker's qualifications for the post to which he has been nominated. Thank you in advance for your prompt response to this request.

Sincerely,

Patrick Leahy

PATRICK LEAHY
United States Senator

LAW OFFICES
JUDITH LAUTER BAER
3929 TWENTY-FOURTH STREET
SAN FRANCISCO, CALIFORNIA 94114
(415) 821-6700

July 28, 1988

Senator Patrick Leahy
Senate Judiciary Committee
SD-224 Dirksen Senate Office Building
Washington D.C. 20510

Attn: Steven J. Metalitz, Chief Nominations Counsel

Re: Nomination of Vaughn R. Walker to the United States District Court, Northern District of California

Dear Senator Leahy and Mr. Metalitz:

Thank you for providing me with a transcript of the June 13, 1988 Senate Judiciary Committee hearing on the nomination of Vaughn R. Walker to the United States District Court for the Northern District of California.

As you requested, I have enclosed my written comments regarding my contacts with Mr. Walker and regarding the representations made by the nominee and the witnesses at the hearing.

I hope that the Committee will give full consideration to my reservations concerning Mr. Walker's qualifications for the post to which he has been nominated.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

JUDITH LAUTER BAER

JLB/gg

TESTIMONY OF JUDITH L. BAER, ATTORNEY TO COMMMITTEE ON THE JUDICIARY, U.S. SENATE

RE: NOMINATION OF VAUGHN R. WALKER TO U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

July 28, 1988
San Francisco CA.

I, JUDITH LAUTER BAER, declare under penalty of perjury:

1. I am a member in good standing of the State Bar of California. I earned a Juris Doctor degree from Golden Gate University, School of Law, in the year 1977, and I have been in active practice in San Francisco, California, since 1978, emphasizing estate planning, probate, real property and personal injury law.

2. I served as the estate planning attorney for the late Dr. Thomas F. Waddell. Tom was not only a client, but a good friend to me. I was close to him and spent a considerable amount of time with him over the years, including the period from August 1986, when he received his AIDS diagnosis, through July 11, 1987, when he died.

3. I have read the testimony of the witnesses as to the nomination of Vaughn R. Walker provided to the Committee on the Judiciary on June 13, 1988.

4. Based on a letter from John Kester to Mary Dunlap dated March 13, 1987, and a discussion with Ms. Dunlap, I called Mr. Kester at Williams & Connolly on May 19, 1987, to accomplish action in the removal of the lien[1]. John Kester told me that he and Williams & Connolly had absolutely nothing to do with the liens and that he and his firm were solely retained to handle the Supreme Court proceedings in the case. Mr. Kester then gave me the name and

---

[1] At the time I made this call, I was informed that there was one lien by USOC on Tom Waddell's property. As I discovered in June, 1987, there actually were 6 real property liens and a lien on his personal property, of which he had received notice over a long period of time.

number of Mr. Vaughn R. Walker. The testimony of Senator Pete Wilson (pp. 28-29), insofar as it states or implies that Vaughn Walker was not in charge of the case and the liens as of May 1987, apppears to be false. Likewise, Mr. Walker's testimony that he was not counsel to USOC in May 1987 (p. 67) appears to be false.

5. I first called Vaughn Walker on May 19, 1987, after my call to Mr. Kester. Mr. Walker testified to this telephone call (pp. 62-63), and claimed to the Committee that John Kester was in charge of the lien, and that he, Vaughn Walker, was not. John Kester told me the opposite on the phone on May 19, 1987. The purpose of my first call, and of all of my calls to and contacts with, Mr. Walker, was to secure his action to remove the liens. My research in the matter assured me that there was nothing I could do to get the lien removed, without the cooperation and agreement of Mr. Walker.

6. When I spoke with Mr. Walker on May 19, 1987, Mr. Walker told me that he had received a letter from Mary Dunlap about the lien, in or about January 1987, and he repeatedly insisted that I should not be worried or concerned about the lien because it had been released and was not in effect. I explained the matter of refinancing to Mr. Walker, and explained to him that the presence of the lien, without a valid release, clouded the title to Tom Waddell's residential property. Mr. Walker repeatedly urged me to record the opinion of the U.S. Court of Appeals for the Ninth Circuit in the case, and I explained to him that it was not a recordable document and would not accomplish the purpose of removing the lien, even were it recordable. Mr. Walker then

told me that the lien was not his responsibility, and that he had nothing to do with it, and he told me to call John Kester in Washington D.C. and to call an attorney in his office in San Jose, California. Mr. Walker was entirely uncooperative and unhelpful with me in this telephone conversation. Mr. Walker did tell me that he would pass my "request" for removal of the lien on to USOC, and I waited to hear back from him on this.

7. I believe, based on my research and understanding of liens, that any research that Mr. Walker could have done (and he claims to have done some, or to have had it done for him, at p. 61) would have told him clearly that the lien was still in practical effect, absent a validly executed and recordable release. Yet on May 19, 1987, Mr. Walker insisted to me that there was no need for a release.

8. I received a letter from Mr. Walker dated May 28, 1987, about one week from that date. The May 28, 1987 letter told me nothing that Mr. Walker had not said by phone on May 19, 1987. It essentially reiterated his part of our phone conversation of May 19; the letter established that Mr. Walker believed that he had no responsibility to sign a release. The letter only added a citation to an inapposite case to justify his erroneous position that recording the opinion was sufficient to remove the lien.

9. After the letter from Mr. Walker that I received in early June, 1987, I became sure that anything that could be done to remove the lien, I would have to do, almost certainly without Mr. Walker's cooperation. Although Mr. Walker testified to the Committee that in the letter of May 28, 1987, he had volunteered to sign off on a release (p.67), the letter not only does not state this, but it implies that there is no need for a release; this is what Mr. Walker told me over and over, that there was no need for a release. At this time, in the first half of June, 1987, I showed Mr. Walker's letter to Tom Waddell, and spoke with Tom about the lien. Tom informed me that he had been receiving notices of liens from all of the counties in which he owned property. Tom was very ill by this time, and his records were in disarray and he could not get up to help me find things. I spent the better part of three weeks getting the paperwork in order in this matter, searching through all of the files and storage places in Tom's house. I located personal property lien notices to Tom from Alameda County (1), Marin County (1), San Francisco County (2) and Contra Costa County (2), and a lien filed on all of Tom's personal property, by USQC. Copies of these liens are attached to this testimony, marked "Exhibit A" hereof, and are incorporated herein by this reference. Because of Mr. Walker's uncooperativeness on May 19, 1987, I believed that I must get all of the papers together and in order in this matter, and that I must go to Mr. Walker with one consolidated request for the release of all of these liens.

10. From summer 1986, when I became Tom's estate planning attorney, to the end of his life, Tom Waddell expressed to me a real and continuing fear of losing his property because of the liens, and particularly of being unable to will his residence at 141 Albion Street, San Francisco, to his daughter, Jessica. Jessica Waddell Lewinstein was the light and the center of Tom's life, and he spoke to me many times about wanting to be sure that Jessica would have his home. Tom's home, a very special place filled with the art and memories and beauty of his life, is full of Tom's distinctive spirit. Starting in approximately summer 1986, Tom spoke to me often and with great agitation about the lien on his home. He told me how worried he was, and that he felt Vaughn Walker in particular had used the lien to harass and torment him. In the last month of Tom's life, Tom was so weak and sick that when he spoke of the liens, I reassured him that no matter what, I would get the liens removed and that he must not worry. However, he knew the liens were still in place and I could not really reassure him. I was with Tom frequently during his dying, and on July 11, 1987 when he died. I know for certain that Tom died not knowing that Jessica would inherit his home.

11. On July 9, 1987, when I had gathered all of the liens together and prepared the necessary release forms, I sent these materials by messenger for same-day delivery to Mr. Walker.

12. On July 11, 1987, Tom Waddell died.

13. On Friday, July 17, 1987, having heard nothing from Mr. Walker in response to my urgent package of July 9, 1987, I

telephoned Mr. Walker. I asked him what he had done with the package and my request for a signature, and he told me, "Nothing". I note that this representation contradicts Mr. Walker's testimony to this Committee that he had forwarded copies of the releases to USOC before July 17, 1987 (p. 68). I told Mr. Walker that there was to be a memorial service for Tom Waddell the next day, July 18, 1987, for the general public in the rotunda of City Hall, San Francisco, and that Sara Lewinstein (Tom's widow, and the mother of Jessica Waddell Lewinstein) and I very much wanted to be able to bring to that gathering the good news of a release of the liens, and that, if we did not have a release, we would be announcing that fact. I believe that Mr. Walker was aware that Tom's death, and the memorial service, were being extensively covered in the media. I pressed Mr. Walker for immediate action on the releases. He told me he would call Colorado Springs, which I believe is the location of USOC's offices, and that he would see if they would authorize him to sign. I expressed to him that it was urgent, and I asked him to call me back immediately and let me know what was going to happen. Mr. Walker never called me back. Late in the afternoon of July 17, 1987, after waiting for his call, I called, and Mr. Walker did not respond. I contacted his secretary, who advised me that the releases had been signed; I asked her to messenger them to me and she did so. On July 18, 1987, at Tom's memorial service, Sara Lewinstein announced that the liens had been released.

14. In his introduction of Vaughn Walker to this Committee, Senator Pete Wilson states that criticisms of Mr. Walker's

nomination are based on decisions of Mr. Walker's clients and not on his own statements and conduct (p. 27). My criticisms of Mr. Walker's nomination are based strictly and solely on his own statements and conduct, as set forth above. I do not believe that in doing and saying the things Mr. Walker did, set forth above, he was acting on any instruction of his clients. Not only did he not represent to me at any time that his clients were refusing to sign a release, but the letter from Robert Helmick to Peter Ueberroth of March, 1987, states the opposite, that Mr. Helmick believes that the lien was released, and that USOC has no intention of proceeding against the person or property of Tom Waddell.

15. I take particular issue with the testimony of Ephraim Margolin, Esq., to this Committee, regarding Mr. Walker's suitability to be a U.S. District Judge by reason of his being "honest and truthful and ...[not seeking] to shade things in a direction meant to deceive or mislead". I do not believe that Mr. Walker was honest and truthful with me in the dealings about the liens, and I do not think Mr. Walker has been honest and truthful in his statements to this Committee.

16. For the reasons presented in my testimony above, I do not believe that Mr. Walker is qualified to be a U.S. District Judge. I believe he does not have the honesty or compassion necessary to function in that position.

Dated: 28 July 1988

JUDITH LAUTER BAER

MAIL TO:
Secretary of State
P.O. Box 1738
Sacramento, CA 95808

STATE OF CALIFORNIA
NOTICE OF JUDGMENT LIEN ON PERSONAL PROPERTY
(FOR FILING IN THE OFFICE OF THE SECRETARY OF STATE)
IMPORTANT—Read instructions on back before completing this form
REFERENCE: CODE OF CIVIL PROCEDURE SECTIONS 697.510, 697.550 AND 697.570

1. JUDGMENT DEBTOR (LAST NAME FIRST, IF AN INDIVIDUAL) Waddell, Thomas F.

1A. MAILING ADDRESS OF JUDGMENT DEBTOR 141 Albion Street	1B. CITY, STATE San Francisco, CA	1C. ZIP CODE 94150

2. ADDITIONAL JUDGMENT DEBTOR (IF ANY) (LAST NAME FIRST, IF AN INDIVIDUAL) San Francisco Arts & Athletics

2A. MAILING ADDRESS OF ADDITIONAL JUDGMENT DEBTOR 890 Hayes Street	2B. CITY, STATE San Francisco, CA	2C. ZIP CODE 94117

3. JUDGMENT CREDITOR United States Olympic Committee, a corporation organized and existing under the laws of the USA; International Olympic Committee, a corp. organized & existing under the laws of Switzerland
MAILING ADDRESS: c/o Pillsbury, Madison & Sutro, V. Walker, V. Granneman, 225 Bush St.
CITY: San Francisco STATE: CA ZIP CODE: 94104

4. ALL PROPERTY SUBJECT TO ENFORCEMENT OF A MONEY JUDGMENT AGAINST THE JUDGMENT DEBTOR TO WHICH A JUDGMENT LIEN ON PERSONAL PROPERTY MAY ATTACH UNDER SECTION 697.530 OF THE CODE OF CIVIL PROCEDURE IS SUBJECT TO THIS JUDGMENT LIEN.

A. Title of court where judgment was entered: U.S. District Court for the No. Dist. of California

B. Title of the action: International Olympic Committee, et al., v. San Francisco Arts & Athletics, et al.

C. Number of the action: C-82-4183-J.P.V.

D. Date judgment was entered: 2/17/84 and 9/21/84

E. Dates of subsequent renewals of judgment (if any): N/A ;

F. Amount required to satisfy judgment at date of this notice: $ 99,149.59

G. Date of this notice: 11/30/84

4DEC84 PM [illegible]

5. *I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.*

Dated: December 3 19 84 (If not indicated, the date of declaration is the same as date in item 4G)

(SIGNATURE—SEE INSTRUCTION NO. 5)

FOR: Pillsbury, Madison & Sutro, Attorneys for Judgment Creditor

6. THIS SPACE FOR USE OF FILING OFFICER (DATE, TIME OF FILING AND FILE NUMBER)

7. *RETURN COPY TO*

NAME Vernon H. Granneman, Esq.
ADDRESS Pillsbury, Madison & Sutro
CITY 333 W. Santa Clara Street
STATE ZIP CODE San Jose, CA 95113

EXHIBIT A

(4) File Copy—Debtor

NOTICE OF JUDGMENT LIEN—FORM J-1 (7/83)
PRESCRIBED BY THE SECRETARY OF STATE

FILING FEE $3.00

COUNTY OF MARIN
OFFICIAL RECORDS
VITAL STATISTICS
OFFICE OF
W. BRUCE SHAFER, COUNTY RECORDER
OFFICIAL RECORDS
VITAL STATISTICS

NOTICE OF INVOLUNTARY LIEN

Pursuant to Government Code Section 27297.5, effective January 1, 1981, the county recorder must notify persons against whom an involuntary lien is recorded. You are hereby notified that a copy of the recorded document enclosed may be a lien against your real property.

Please direct any questions to your attorney or the claimant named on the enclosed document.

There is no further information available in this office.

The Recorder cannot release any lien from record without a release of lien from the claimant.

CIVIC CENTER, SAN RAFAEL, CALIFORNIA 94903
TELEPHONE 499-6092

COUNTY OF MARIN
OFFICE OF
W. BRUCE SHAFER, COUNTY RECORDER

OFFICIAL RECORDS
VITAL STATISTICS

OFFICIAL RECORDS
VITAL STATISTICS

NOTICE OF INVOLUNTARY LIEN

Pursuant to Government Code Section 27297.5, effective January 1, 1981, the county recorder must notify persons against whom an involuntary lien is recorded. You are hereby notified that a copy of the recorded document enclosed may be a lien against your real property.

Please direct any questions to your attorney or the claimant named on the enclosed document.

There is no further information available in this office.

The Recorder cannot release any lien from record without a release of lien from the claimant.

CIVIC CENTER, SAN RAFAEL, CALIFORNIA 94903
TELEPHONE 499-6092

Office of the Recorder

822 Main St.
P.O. box 350
Martinez, California 94553
(415) 372-2360

Contra
Costa
County

James R. Olsson
County Recorder

Sam Klebanoff
Assistant County Recorder

WADDELL, THOMAS F
141 ALBION ST
SAN FRANCISCO, CA. 94150

DOCUMENT
85036030

LIEN NOTICE

Under the provisions of California Government Code, Section 27297.5 (recordation of liens affecting real property) we are notifying you that a lien has been recorded in the official records of this county which may affect the title to real property you own in this county.

We enclose a copy of the original document for your information.

If you need additional information as to this matter, you should call the person claiming this lien against you.

We have marked that person's name with a red check mark.

You may also wish to consult your attorney.

We cannot assist you in locating the person claiming this lien against you.

All the information we have concerning this matter is contained in the copy of the document we have enclosed.

Office of the Recorder

822 Main St.
P.O. box 350
Martinez, California 94553
(415) 372-2360

Contra
Costa
County

James R. Olsson
County Recorder

Sam Klebanoff
Assistant County Recorder

MARDELL, THOMAS F
141 ALBION ST
SAN FRANCISCO, CA. 94150

DOCUMENT
85055536

LIEN NOTICE

Under the provisions of California Government Code, Section 27297.5 (recordation of liens affecting real property) we are notifying you that a lien has been recorded in the official records of this county which may affect the title to real property you own in this county.

We enclose a copy of the original document for your information.

If you need additional information as to this matter, you should call the person claiming this lien against you.

We have marked that person's name with a red check mark.

You may also wish to consult your attorney.

We cannot assist you in locating the person claiming this lien against you.

All the information we have concerning this matter is contained in the copy of the document we have enclosed.

CITY AND COUNTY OF SAN FRANCISCO
RECORDER S OFFICE
167 CITY HALL

NOTICE OF INVOLUNTARY LIEN

RE: PURSUANT TO GOVERNMENT CODE SECTION #27297.5

EFFECTIVE JANUARY 1, 1981, THE COUNTY RECORDER'S OFFICE MUST NOTIFY ALL PERSONS AGAINST WHOM AN INVOLUNTARY LIEN IS RECORDED.

YOU ARE HEREBY NOTIFIED THAT A COPY OF THE RECORDED DOCUMENT ENCLOSED MAY BE A LIEN AGAINST YOUR REAL PROPERTY.

THE REGISTRAR-RECORDER'S OFFICE CANNOT RELEASE THIS LIEN FROM YOUR REAL PROPERTY WITHOUT A RELEASE OF LIEN FROM THE CLAIMANT.

PLEASE DO NOT CALL THE REGISTRAR-RECORDER'S OFFICE IN REGARDS TO THIS MATTER.

PLEASE CONTACT YOUR ATTORNEY AND/OR THE CLAIMANT OF THE LIEN.

Lien notice mailed to [illegible] at address shown" (Government Code 27297.5)

[illegible], San Jose, CA 95113

Amount of the judgment or decree: $__________ Principal, $__________ Interest,

$ 96,600.00 Attorney fee, and $__________ Costs.

Where entered in judgment book: Volume __________ Page __________

Appeals when taken__________

Judgment of Appellate Court__________

Satisfaction of Judgment__________

A Stay of Enforcement has not been ordered.
Judgment creditor believes on information that the Debtor's social security number is 152-28-6990"

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF CALIFORNIA } ss:

I, WILLIAM L. WHITTAKER Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a correct abstract of the judgment or decree in the cause therein referred to.

WITNESS my hand and the Seal of the said Court this 25th day of April A. D. 1985

WILLIAM L. WHITTAKER
Clerk

By Chu Borromeo
Deputy Clerk

ABSTRACT OF JUDGMENT OR DECREE

85018002

RECORDED AT REQUEST OF
ATTORNEY
1985 MAY -1 PM 1:45
OFFICIAL RECORDS
MARIN COUNTY CALIFORNIA
W. BRUCE SHAFER

PILLSBURY, MADISON & SUTRO
SUITE 800
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113

United States District Court

For The
Northern District of California

International Olympic Committee, et al. vs. San Francisco Arts & Athletics, et al. 500

Plaintiff — Defendant

Number of the action: C-82-4183 J.P.V.

Date of entry of the judgment or decree: 2/16/84 (entered on civil docket 2/17/84)

* Judgment debtor: Thomas F. Waddell, 141 Albion Street, San Francisco, California 94150. Summons was served at this address.

Judgment creditor: International Olympic Committee, U.S. Olympic Committee, c/o Pillsbury, Madison & Sutro, 333 W. Santa Clara St., #800, San Jose, CA 95113

Amount of the judgment or decree: $ ______ Principal, $ ______ Interest,
$ 96,600.00 Attorney fee, and $ ______ Costs.

Where entered in judgment book: Volume ______ Page ______

Appeals when taken ______

Judgment of Appellate Court ______

Satisfaction of judgment ______

A Stay of Enforcement has not been ordered.
Judgment creditor believes on information that the Debtor's social security number is 152-28-6990

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF CALIFORNIA } ss:

I, WILLIAM L. WHITTAKER, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a correct abstract of the judgment or decree in the cause therein referred to.

WITNESS my hand and the Seal of the said Court this 25th day of April A.D. 1985

WILLIAM L. WHITTAKER
Clerk

By ______ Deputy Clerk

LIEN NOTIFICATION

4.00 FEE	MAILED

ABSTRACT OF JUDGMENT OR DECREE

REEL D830 IMAGE 1077

RECORDED AT REQUEST OF

1985 MAY -1 AM 11:31

SAN FRANCISCO, CALIF RECORDER

D638224

United States District Court

For The

Northern District of California

International Olympic Committee, et al. vs. San Francisco Arts & Athletics, et al.

Plaintiff

Defendant

3/1/1/6 a

Number of the action: C-82-4183 J.P.V.

Date of entry of the judgment or decree: 2/16/84 (entered on civil docket 2/17/84)

Judgment debtor: Thomas F. Waddell, 141 Albion Street, San Francisco, California 94150. Summons was served at this address.

Judgment creditor: International Olympic Committee, U.S. Olympic Committee, c/o Pillsbury, Madison & Sutro, 333 W. Santa Clara St., #800, San Jose, CA 95113

Amount of the judgment or decree: $ ________ Principal, $ ________ Interest, $ 96,600.00 Attorney fee, and $ ________ Costs.

Where entered in judgment book: Volume ________ Page ________

Appeals when taken ________

Judgment of Appellate Court ________

Satisfaction of Judgment ________

A Stay of Enforcement has not been ordered.
Judgment creditor believes on information that the Debtor's social security number is 152-28-6990

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF CALIFORNIA } ss:

I, WILLIAM L. WHITTAKER Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a correct abstract of the judgment or decree in the cause therein referred to.

WITNESS my hand and the Seal of the said Court this 26th day of April A. D. 1985

WILLIAM L. WHITTAKER
Clerk

By ________
Deputy Clerk

ABSTRACT OF JUDGMENT OR DECREE

Lien notice mailed to Waddell
at address shown
(Government Code 27297.5)

RECORDED AT REQUEST OF

1985 MAY -1 AM 11:31
SAN FRANCISCO, CALIF.
RECORDER

D63822

United States District Court

For The
Northern District of California

International Olympic Committee, et al. — Plaintiff

vs.

San Francisco Arts & Athletics, et al. — Defendant

3/1/1/6 cr

Number of the action: C-82-4183 J.P.V.

Date of entry of the judgment or decree: 2/16/84 (entered on civil docket 2/17/84)

Judgment debtor: Thomas F. Waddell, 141 Albion Street, San Francisco, California 94150. Summons was served at this address.

Judgment creditor: International Olympic Committee, U.S. Olympic Committee, c/o Pillsbury, Madison & Sutro, 333 W. Santa Clara St., #800, San Jose, CA 95113

Amount of the judgment or decree: $_____ Principal, $_____ Interest,

$ 96,600.00 Attorney fee, and $_____ Costs.

Where entered in judgment book: Volume _____ Page _____

Appeals when taken _____

Judgment of Appellate Court _____

Satisfaction of judgment _____

A Stay of Enforcement has not been ordered.
Judgment creditor believes on information that the Debtor's social security number is 152-28-6990

Lien notice mailed to Waddell at address shown (Government Code 27297.5)

UNITED STATES OF AMERICA
NORTHERN DISTRICT OF CALIFORNIA } ss:

I, WILLIAM L. WHITTAKER Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing to be a correct abstract of the judgment or decree in the cause therein referred to.

WITNESS my hand and the Seal of the said Court this 25th day of April A. D. 1985

WILLIAM L. WHITTAKER
Clerk

By _____
Deputy Clerk

ABSTRACT OF JUDGMENT OR DECREE

#5

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO   SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW   DAVIS, CALIFORNIA 95616

July 5, 1983

George Kassouf
Alliance for Justice
25 E Street, NW 3rd Floor
Washington, DC 20001

RE: California Law on Judgment
Liens on Real Property

Dear Mr. Kassouf:

When a valid money judgment is rendered the person who is entitled to collect has a right to file a judgment lien upon any real estate which the judgment debtor owners, or in which defendant has an interest. Cal. Code of Civil Procedure § 697.310. The question you posed involves a money judgment for the payment of attorney's fees.

From the time of the entry of the money judgment until such time as enforcement of the judgment is stayed for an appeal either by the filing of a bond or by an order of the court staying the enforcement there can be a valid lien upon real property. In the case you have asked about there would have been a valid and enforceable judgment lien upon the defendant's real property from the entering of the judgment until the stay was issued by the higher court, because of the proper filing of an abstract of judgment in the county clerk's office in the county where the individual defendant owned real property.

The money judgment entered by the Federal District Court in the Northern District of California can become a judgment lien on California real property in the same manner as a state judgment if this is so authorized by state law. See 28 U.S.C. § 1962 (1976). The California Law provides that: "an abstract or a certified copy of a money judgment of a court of the United States that is enforceable in this state may be recorded to create a judgment lien on real property. . ." Cal. Code of Civil Procedure § 697.060.

The perfecting of an appeal does not stay enforcement of the judgment unless the defendant files a undertaking in double the amount of the judgment or if a commercial Surety approved by the state one and one half the amount of the judgment. Cal. Code of Civil Procedure § 917.1. However, courts have the discretion to enter an order staying enforcement of such money judgment in appropriate circumstances. In the case you put to me the Federal Court of Appeals did issue such a stay which enjoined the creditor from enforcing his remedies on the money judgment. In fact it probably extinguished the judgment lien. Although the existing section is not directed to a case in which a judicial determination created the stay the result should be the same in your case. The section is 697.040 of California Code of Civil Procedure and it very clearly states that if a stay of enforcement is obtained on appeal (in the section by giving a bond for payment if the creditor "(1) existing liens created under this division [includes judgment liens] are extinguished.

Section 697.050 states that if a lien is extinguished under the preceding section". . . property held subject to the lien shall be released. . ."

As indicated it is likely the judgment lien was extinguished by the stay of enforcement issued by the Federal Court of Appeals. However, the fact that the lien was extinguished at law does not remove the record in the office in the county where the real property is located.

The Code of Civil Procedure provides the four actions by which the statutory judgment may be removed: (1) by an acknowledgment of satisfaction of the judgment; (2) a certificate of satisfaction of the judgment; (3) an acknowledgment of satisfaction of matured installments under C.C.P. 724.250; and (4) a release or subordination of the judgment executed under C.C.P. 697.370.

The release of judgment lien under § 697.370 may be done only by the judgment creditor. Normally, the judgment creditor will sign a satisfaction or release which may then be entered in the real estate records. If the judgment creditor refuses to sign such a satisfaction the party who is demanding the satisfaction may apply to the court (assumed to be court where the judgment was entered) and after notice and a hearing the court may order the creditor to release or the court may order the court clerk to enter satisfaction of the judgment. When a money judgment is vacated or reversed a release can only be executed by the creditor and failing this action by the former creditor the same steps can presumably be taken by the former debtor as in a case of failure to sign a satisfaction.

Therefore, in the situation you have referred to, after the judgment for attorney's fees was vacated the only thing the former debtor could do when the former creditor refused to execute a release of the lien would have been to commence a new proceeding in the court which entered the judgment and ask the judge to order the court clerk to make such a release under C.C.P. § 724.050 (d).

Even though a judgment lien is extinguished the property is still under a lien of record until a release or satisfaction is filed in the same county where the lien was initially filed. Failing such action the property can not as a practical matter be accepted for sale or loan.

I hope this information is helpful to you.

Very truly yours,

Pierre R. Loiseaux

Pierre R. Loiseaux
Professor of Law

Enc.: Resume

Resume

PIERRE R. LOISEAUX

Office:

University of California, Davis
School of Law
Davis, California 95616
(916) 752-2879

Home:

2718 Rubicon Ave.
Davis, California 95616
(916) 753-8512

Personal:

Born, New York City, April 10, 1925

Education:

Public schools in Port Washington, New York

Attended University of New Hampshire. Major: Government

Boston University School of Law, LL.B., 1950, cum laude.

New York University School of Law, LL.M., 1951.

Attended University of Buffalo; Columbia University; Shrivenham American University, Shrivenham, England, for various periods during and immediately after World War II.

Law school activities: Boston University Law Review 1948-50, Editor-in-Chief 1949-50, Law School Representative to University Senate, 1949-50.

Military Service:

Staff Sergeant, Army Medical Corps, 1943-46.
Service in European Theater of Operations.
Unit: 1256th Combat Engineers, awarded two battle stars.
Honorable discharge, 1946.

Professional Career:

Teaching Fellow, New York University, 1950-51.

Assistant Professor of Law, University of Arkansas, 1951-53.

Associate Professor of Law, Emory University School of Law, 1953-56.

Visiting Associate Professor, University of Texas School of Law, 1956-57.

Associate Professor of Law, University of Texas School of Law, 1957-59.

Professor of Law, University of Texas School of Law, 1959-71, Baker and Botts Professor of Law, 1969-71.

Professor of Law, University of California, Davis School of Law, 1971-

Dean and Professor of Law, University of California, Davis School of Law, 1974-78.

Director, University of California, University of California-Egypt-A.I.D., Agricultural Development Systems Project, Cairo, Egypt, 1980-81.

Visiting Professor, New York University School of Law, Summer 1958.

Visiting Professor, University of North Carolina, Summer 1961.

Visiting Professor, University of Illinois, Summer 1964.

Fulbright Lecturer in Commercial Law, Copenhagen, Denmark 1964-65.

While on Fulbright 1964-65:

Visiting Lecturer, University of Helsinki, Finland. February 1965.

Visiting Lecturer, University of Leuven, Belgium, March 1965.

Visiting Lecturer, International Faculty of Comparative Law, Luxembourg, April 1965.

OPAL Lecturer, Brown University, Summer 1969.

Visiting Professor, University of Texas, Summer 1973.

Visiting Professor, Gonzaga University, Summer 1974.

Sabbatical Leave, Spring 1979 - France and Egypt.

While on Sabbatical 1979:

Bankruptcy Lecturer, Max Plank Institute Hamburg, Germany, April.

Special Study of Egyptian Agricultural Law - University of California - Egypt-A.I.D. Project, February and May.

Conference-Seminar on U.S. Bankruptcy Code of 1978, Brussels-Copenhagen

Visiting Professor, Washington University, St. Louis, 1983-84.

Western European Research, Fulbright Grant and Sabbatical, 1985-86.

While on Sabbatical 1985-86:

Lecturer, University of Munich Faculty of Law, December.

Seminar, German-American Lawyers Organization, December.

Seminar, British Chamber of Commerce in Belgium, February.

Other Activities:

Lecturer on Commercial Paper, Banking School of the South, Louisiana State University, 1965-70.

Lecturer on the Commercial Subjects:
Texas Bar
Academy of American and International Law, Dallas
Texas Bankers Association
Practicing Law Institute
A.L.I. - A.B.A.
California Continuing Education of the Bar
National Institute for Education in Law and Poverty.

Contract field research in Bankruptcy Administration for the Brookings Institution, Summer 1966.

Consultant to the Commission on the Bankruptcy Laws of the United States, 1972.

Memberships:

Massachusetts Bar, 1950-

American Bar Association -Business Law Section - Legal Education Section. Commercial Bankruptcy Committee, 1977-

National Bankruptcy Conference, 1963-

Conference on Personal Finance Law.

California State Bar Committee on Legal Education, 1974-78.

California Continuing Education of the Bar, Advisory Committee, 1974-78.

American Arbitration Association, Labor Panel.

American Law Institute, Ex Officio 1974-78, Elected 1978-

PIERRE R. LOISEAUX

Bibliography

BOOKS

1. Labor Relations and the Law (with others), 2d ed., Little, Brown & Company (1960).
2. Creditors' Rights in Texas, Chapter 23: The effect of Discharge in Bankruptcy, West Publishing company (1963).
3. Cases on Creditors' Remedies, Bobbs-Merrill (1966).
4. UCC In Texas, Lending Officer's Manual (with others), Texas Bankers Association (1966).
5. 1973 supplement to California Commercial Law: III CEB 1973.
6. Author, 12 Collier on Bankruptcy, 14th Edition, pp. 1-1 to 1-120 (1975).
7. Cases on Debtor-Creditor Relations (with Hawkland), Michie Bobbs-Merrill (1979).
8. Contracts, Cases and Materials (with Fessler), West 1982.

ARTICLES

1. "The Newcomer and the Case Method," 7 J. Legal Ed. 244 (1954).
2. "Security Transactions," 8 Mercer L. Rev. 144 (1956).
3. "Some Questions About Labor Arbitration," 1956 Wash. L.Q. 51 (1956).
4. "Collective Bargaining: Some Fundamental Assumptions in Law and Practice," (with Miller) 35 Texas L. Rev. 188 (1956).

5. "The Nature of the Arbitration Process," (with Hepburn) 10 Vand. L. Rev. 657 (1957).

6. "Jury Behavior as a Function of the Prestige of the Foreman and the Nature of His Leadership," (with Bevan, Albert, Mayfield and Wright) 7 J. Pub. Law 419 (1958).

7. "Innocent Victims 1959," 38 Texas L. Rev. 154 (1959), reprinted 10 Law Rev. Digest 54 (1959).

8. "Federal Tax Liens in Bankruptcy," 15 Vand. L. Rev. 137 (1961).

9. "Domestic Relations in Bankruptcy," 41 N.C. L. Rev. 27 (1962), reprinted 37 J. Natl. Assoc. Ref. in Bkry. 68 (1963).

10. "Loans or Capital Contributions to the Closed Corporation," 38 Natl. Assn. Ref. in Bkry. 4 (1969).

11. "Some Legal Consequences of the Accidental Destruction of Goods," Juridiska Foreningen i Finland 4/1956 p. 1969.

12. "The American Concept of Consideration," Tijoschrift Voor Privaatrecht 2/1966 p. 181.

13. "Default Proceedings Under the Texas Uniform Commercial Code." 44 Texas L. Rev. 702 (1966).

14. "Transition to the Texas Uniform commercial code," (with M.H. Ruud) 29 Texas B.J. 345 (1966).

15. UCC Amendments Significant to Texas Banks, Banking (with Robert W. Hamilton and M.H. Ruud) 56 Texas Bankers Record 32 (1967).

16. "Some Usury Problems in Commercial Lending," 49 Tex. L. Rev. 419 (1971).

17. "Liability of Corporate Shares to Legal Process," 1972) Duke Law J. 947 (1972).

18. "Bankruptcy Law vs. Labor Law: The Search for a Solution," 18-25 Center for the Study of Am. Business #60 (1984).

APPENDIX B

OTHER SUBMISSIONS FOR THE RECORD

Law Offices Of

HOWARD
RICE
NEMEROVSKI
CANADY
ROBERTSON
& FALK

A Professional Corporation

THREE EMBARCADERO CENTER
SEVENTH FLOOR
SAN FRANCISCO, CA 94111
415/434-1600
TELEX & TWX 910-372-7214
TELECOPY 415-399-3041, 3161

HENRY W HOWARD
DENIS T RICE
HOWARD N NEMEROVSKI
RICHARD W. CANADY
A. JAMES ROBERTSON II
JEROME B FALK JR.
RAYMOND P HAAS
ROBERT E GOODING JR
MARTIN R GLICK
LAWRENCE B BORKIN
WILLIAM T HUTTON
STEVEN L MAYER
BARBARA GORDON
JAMES L. LOPES
DIRK M SCHENKKAN
THOMAS A LARSEN
MICHAEL Q. EAGAN
STEVEN E. SCHON
KENNETH G HAUSMAN
DONALD F MILES
H JOSEPH ESCHER III
ELIZABETH S SALVESON
H MATHEW MOORE
PETER J BUSCH

RONALD H STAR
DANIEL J WINNIKE
JEFFREY L SCHAFFER
LYNN P HART
MARK D WHATLEY
JANET L EVANS
SARAH K HOFSTADTER
LESLIE A BURTON
ALAN W SPARER
THERESE M STEWART
CHARLES P ORTMEYER
PETER COHN
MARTHA K. CUNNINGHAM
JANET A. NEXON
CHARLOTTE M SAXON
TIMOTHY S. McCANN
JONATHAN H. HULBERT
JAMES C. NOONAN
LAURENCE F PULGRAM
ETHAN P. SCHULMAN
BERNARD A. BURK
HELEN L CONROY
PAMELA L GURFEIN
TODD F THOMPSON

MELANIE L MORRISON
MARANN P JOHNSTON
MIRIAM B ARKIN
LINDA A MABRY
SUZY M ANTOUNIAN
HORACE L NASH
BARBARA A WINTERS
JAMES D LEBKIN
CARIN T FUJISAKI
KIMBERLY W SCALA
PAULINE E CALANDE
ERIC A KLEIN
ANNE S. NIELSEN
MATTHEW C JACOBS
SANDRA E MacKINNON
GEORGE B SHEPHERD

ROBERT R NELSEN
ROBERT H MNOOKIN
ANN V BRICK
OF COUNSEL

January 29, 1988

Hon. Joseph Biden
United States Senate
Washington, D.C.

Dear Senator Biden:

I am writing regarding the nomination of Vaughn R. Walker to the United States District Court for the Northern District of California.

When controversy concerning this nomination first erupted, I considered writing to you, but hesitated because my contacts with Mr. Walker have not included any actual litigation encounters, but have largely been in connection with activities of the Bar Association of San Francisco, of which I was President in 1985, and the Lawyers Club of San Francisco, of which Mr. Walker was subsequently President, and other like professional activities. In my dealings with him, I have always found Mr. Walker to be intelligent, courteous and friendly, and I would expect those fine personal qualities would carry over into his conduct as a United States District Judge.

I am particularly and deeply disturbed by the nature of certain opposition to Mr. Walker as a result of his representation of the United States Olympic Committee in highly visible litigation concerning the Gay Olympics. For what its worth, my personal opinion is that whatever the technical right of the Olympic Committee to prevent the use of the term Gay Olympics by the organization that sought to use that name, it was appalling that they chose to do so. Nevertheless, the Committee had a right to counsel; and equally plainly Mr. Walker had an obligation, once he undertook representation of the Committee, to represent his client fully and vigorously irrespective of the popularity of the position his client had taken.

The issue raised here is fundamental to our system of justice. Lawyers often are asked to represent unpopular clients or unpopular causes. There must be no question in the mind of the client or the public that the lawyer's sole loyalty is to the client, with no concern for the lawyer's reputation, image or prospects for future political or judicial appointment.

It is understandable that this is a difficult point for some to grasp, especially members of a frequently oppressed minority such as the gay community. That community has every right to resent the position taken by the U.S. Olympic Committee in that case, as indeed do I. But it is of crucial importance that one distinguish between the lawyer and the client. Mr. Walker was the lawyer, not the litigant.

I recognize that, in addition, there have been specific charges regarding Mr. Walker's conduct of that case. About those allegations I have no information, and of course the Judiciary Committee should, and I am sure will, investigate the allegations thoroughly. I only urge that in doing so and announcing the result that the Committee and its staff carefully distinguish between alleged misconduct and honorable representation of unpopular causes.

May I add a personal word: like many Americans, and especially many lawyers, I found myself glued to the television set during the recent hearings on the nomination of Judge Bork. I applaud the result, but more importantly the process. The hearings were the greatest Constitutional Law class I have ever encountered, and credit for that surely goes in large part to the Chairman. The pride of country which I felt as a result of what transpired was far deeper and more satisfying than the kind generated by marching bands or noisy rallys, and the country owes you and the Committee a debt of gratitude.

I am confident that the same will be said of the Committee for its treatment of the nomination of Vaughn Walker, who deserves to be judged on his own merits and not on the basis of the clients he represented at the Bar.

Very truly yours,

Jerome B Falk, Jr

JEROME B. FALK, JR.

/bt

Richard W. Odgers
Executive Vice President Law

Pacific Telesis Center
130 Kearny Street
San Francisco, California 94108
(415) [illegible]

PACIFIC TELESIS
Group

February 12, 1988

The Honorable Joseph R. Biden, Jr.
United States Senate
SR-489 Russell Senate Office Building
Washington, D.C. 20510-0802

Dear Senator Biden:

I am writing with respect to the nomination of Vaughn Walker to the Federal District Court for the Northern District of California. I was inspired to write this letter -- which was not solicited -- because I am deeply disturbed by some of the charges that have been leveled concerning Mr. Walker's qualifications to become a Federal District Judge. The root of my concern is that those who are opposing Walker's confirmation have apparently confused him with some of his clients.

I practiced law with Vaughn Walker for fifteen years. In that time I developed close familiarity with his social and political views, the clients he represented, and his approach to practicing law. Taking the last area first, Walker's approach to the practice has been that a lawyer should take on clients of every stripe and persuasion and do his very best effectively to represent them. Walker has separated his personal views from his obligation to be an effective advocate for his clients -- an attitude that many of us were encouraged to adopt when we were in law school.

I personally disagreed with some of the positions taken by certain of Walker's more controversial clients, and I probably would not have elected to represent them. But the fact that he did represent them -- and was an aggressive advocate -- should not be confused with his personal views nor is it relevant to the question of his judicial temperament.

Turning to the core question of Walker's judicial temperament, I can represent with complete confidence that, in sharp contrast to some of the claims I have recently read, Walker has fewer biases, is more tolerant of those who disagree with him, and more understanding of those whose life styles differ from his, than almost any lawyer I have met. If confirmed I have no doubt that he would be among the most even-handed judges on the Federal bench. In short, the concerns expressed have confused the advocate with the human being. The confusion may be forgiven, but it should not be allowed to stand in the way of what even the critics will come to recognize is an outstanding appointment.

I am sufficiently convinced of the accuracy of these observations that, if necessary, I am willing to appear before the Committee in support of Vaughn Walker's nomination.

Richard W. Odgers

RWO:hb

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

February 19, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: VAUGHN R. WALKER
United States District Court
for the Northern District of California

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Vaughn R. Walker for appointment as Judge of the United States District Court for the Northern District of California.

A majority of our Committee is of the opinion that Mr. Walker is "Qualified" for this appointment. The minority found him to be Well Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

LAW OFFICES OF
MORRISON & FOERSTER
CALIFORNIA CENTER
345 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94104-2105
TELEPHONE (415) 434-7000
TELEFACSIMILE (415) 434-7522
TELEX 34-0154

LOS ANGELES
WOODLAND HILLS
WALNUT CREEK
PALO ALTO

WASHINGTON, D. C
DENVER
LONDON
HONG KONG

WRITER'S DIRECT DIAL NUMBER

(415) 434-7189

February 24, 1988

The Honorable Joseph Biden
United States Senate
Washington, D. C.

Re: Nomination of Vaughn Walker for
U. S. District Court for the
Northern District of California

Dear Senator Biden:

Vaughn Walker, a partner in the law firm of Pillsbury, Madison & Sutro, is presently being considered for appointment to the federal district court in San Francisco. I am writing to express my concern about one matter that is being held against Mr. Walker. It is his representation of the United States Olympic Committee. I am concerned that any candidate for judicial office would have held against him the representation of a particular client. I appreciate your consideration of my views, which are as follows:

1. You no doubt have heard and will hear from a number of people who know Mr. Walker personally and can comment on his years of practice, his scholarship, and his qualifications for the district court. I know Mr. Walker casually and cannot comment on these matters.

2. I am deeply concerned about the idea that a candidate for judicial office can have held against him or her a prior representation of a particular client. This is a mischievous and unworkable idea. The press coverage of Mr. Walker's nomination in San Francisco has included many statements about his representation of the Olympic Committee. Any practicing lawyer is called upon to represent clients whose views, philosophy, background, and goals are different from the lawyer. Not only is it not a negative thing to represent certain clients, it is one of

the highest callings in our profession to step forward and represent a client even if that client might be a despised person. The Olympic Committee is certainly not such a despised organization but the point is the same. I have no reason to think that members of the Judiciary Committee would use Mr. Walker's representation of a particular client against him. So I assume that I am preaching to the converted. It would be easy enough for any of us from any political party to pick out a former client of a nominee and try to transfer the qualities of the client to the lawyer. That would be a disaster for the careful process that your committee goes through.

I have heard in San Francisco some who think there might be a difference where the lawyer represents the client pro bono because, "The lawyer didn't have to take the case." I don't think such a distinction is warranted. As you and the members of your committee well know, every day lawyers take on cases pro bono for clients with whom they disagree.

When I did have the opportunity to testify before your committee in the summer of 1985, I was impressed by the careful way in which members tried to sift through the qualifications of the nominee. I hope that these thoughts will be of some help and that when Mr. Walker is confirmed or rejected, it will have nothing to do with what clients he has represented in the past.

Very truly yours,

James Brosnahan

James J. Brosnahan

JJB:pb

cc: Members of the Senate Judiciary Committee
The Honorable Alan Cranston

The Lawyers' Club of San Francisco

FOUNDED IN 1946

OFFICERS

President
LUTHER J AVERY

Office of the President
601 Montgomery Street #900
San Francisco CA 94111
(415) 788-8855

President-Elect
DIANE ELAN WICK

Vice-President
PHILIP D HUMPHREYS

Treasurer
EDWARD J NEVIN

Secretary
KAY DEL CARMEN HOLLEY

BOARD OF GOVERNORS

F ROSS ADKINS
FRED H ALTSHULER
MARJORIE M CHILDS
ROBERT C ELKUS
LAWRENCE E FAHN
BURTON J GOLDSTEIN
PATRICIA STERN GREEN
KAMINI KANT GUPTA
DARREL C HORSTED
IKE K LASATER
JUDGE LELAND J LAZARUS
MARY E MACDONALD
RICHARD D MALTZMAN
EPHRAIM MARGOLIN
CRAIG NEEDHAM
STEVEN S ROSENTHAL
JEROME SAPIRO JR.
VAUGHN R WALKER
CHARLOTTE L WALTER
ROBERT C WEBSTER
NELSON H WILD
MICHEL F WILLEY
frank d. winston
MARY E WISS
MARK J WLEKLINSKI

PAST PRESIDENTS

1948 L A WORTHINGTON
1950 LELAND J LAZARUS
1953 JOHN H FINGER
1955 J ALBERT HUTCHINSON
1958 GERALD D MARCUS
1959 THOMAS M JENKINS
1960 FRANK J FILIPPI
1962 LAWRENCE S MANA
1966 BURTON J GOLDSTEIN
1967 HENRY C TODD
1968 ROBERT E CARTWRIGHT
1969 LEROY HERSH
1970 JACQUES R WELDEN
1971 EDWARD F TOWERS
1972 GEORGE P FINNEGAN
1973 ALEXIS J PERILLAT
1974 RICHARD M KAPLAN
1975 JAMES D HADFIELD
1976 RUTH CHURCH GUPTA
1977 JACQUES M ADLER
1978 JOHN LOCKLEY
1979 MORRIS D BOBROW
1980 JEROME MARKS
1981 RICHARD J WALL
1982 frank d winston
1983 EPHRAIM MARGOLIN
1984 NELSON H WILD
1985 JEROME SAPIRO, JR
1986 CRAIG NEEDHAM
1987 VAUGHN R WALKER

EXECUTIVE DIRECTOR

MARTI LOCHRIDGE
685 MARKET ST. SUITE #750
SAN FRANCISCO, CA 94105
(415) 882-9150

Contact: Luther J. Avery
(415) 788-8855

NEWS RELEASE **For Immediate Release**

SAN FRANCISCO, March 14

At its January 7, 1988 meeting, the Board of Governors of The Lawyers' Club of San Francisco passed the attached resolution in support of Vaughn R. Walker who has been appointed to the U.S. District Court for the Northern District of California.

Attachment

685 MARKET STREET, SUITE 750 SAN FRANCISCO, CALIFORNIA 94105 (415) 882-9150

VAUGHN R. WALKER RESOLUTION

Resolution of The Lawyers' Club of San Francisco, adopted on the 7th day of January 1988.

The Board of Directors of The Lawyers' Club of San Francisco at its regular business meeting held on January 7, 1988, adopted the following resolution:

WHEREAS, Vaughn R. Walker, a former President of the LCSF, has been proposed for appointment to the U.S. District Court, and

WHEREAS, Vaughn R. Walker graduated from the University of Michigan in 1966 and Stanford Law School in 1970, and

WHEREAS, Vaughn R. Walker is a partner of the San Francisco law firm of Pillsbury, Madison and Sutro with extensive experience in handling responsible litigation in California state and federal courts, and

WHEREAS, Vaughn R. Walker is known to have judicial temperament, and is scholarly and fair, and has the ability to hear both sides of an argument before deciding issues coupled with the ability to listen to those who are arguing before him, and

WHEREAS, Vaughn R. Walker has outstanding administrative talents and is known for his efficiency in dealing with litigation documentation and procedures, and

WHEREAS, Vaughn R. Walker is noted for his conscientious and competent representation of clients, as well as efficient and considerate handling of witnesses, and

WHEREAS, Vaughn R. Walker was Law Clerk to Judge Robert J. Kelleher, U.S. District Court, Central District of California, 1971-1972, and Vaughn R. Walker is noted for his proper regard for the separate functions of bar and bench which he keeps within proper limits, and

WHEREAS, in short, Vaughn R. Walker is an excellent lawyer who will make an excellent judge, and

over...

WHEREAS, the federal bench would be benefitted from having a judge of the character and capacity of Vaughn R. Walker,

THEREFORE, BE IT RESOLVED that the Board of Directors at a business meeting duly noticed and held do unanimously endorse the proposal that Vaughn R. Walker be appointed to the Federal District Court.

This resolution unanimously adopted this 7th day of January 1988.

Luther J Avery

Luther J. Avery
President

841.8.reso

A. JAMES ROBERTSON II
THREE EMBARCADERO CENTER
SEVENTH FLOOR
SAN FRANCISCO, CA 94111

May 16, 1988

The Honorable Patrick J. Leahy
United States Senate
SR-433 Russell Senate Office
Building
Washington, D.C. 20510-4502

Dear Senator Leahy:

This letter is written in support of the nomination of Vaughn R. Walker to the United States District Court for the Northern District of California. It responds to certain unfounded allegations that I understand have been made against Mr. Walker.

I am unable to appear personally at Mr. Walker's confirmation hearings scheduled for May 26, 1988, but if I were in a position to appear, I would testify to certain matters as set forth in this letter. Specifically, I would like to address a charge which some have made that Mr. Walker's membership in The Olympic Club of San Francisco displays an insensitivity to minorities. There is no truth in this charge.

Mr. Walker and I have been members of The Olympic Club for a number of years. Like Mr. Walker, I am a trial lawyer in San Francisco--a partner in the law firm of Howard, Rice, Nemerovski, Canady, Robertson & Falk.

It is my understanding that at no time during the past quarter century has The Olympic Club had a bylaw or other formal policy excluding minorities from membership. Until recent years, however, the Club has had no minority members. Although some members of minority groups became Club members in the past several years, it was my understanding that until about the last year the Club had no black members. That situation recently has changed.

Several years ago before these changes, Mr. Walker expressed to me on several occasions his view that the absence of blacks in the Club was an unfortunate situation. He asked my views. I told him that I agreed, and we talked over time of possible ways to change the situation. Mr. Walker said that he had spoken to other members of the Club, some of whom agreed with his position. He said that he had concluded the best way to change the situation was to identify one or more black persons who would like to join the Club, get together a group to act as sponsors, and simply let the name of the individual come up through the regular membership procedure. Over time, we discussed individuals who might have an interest in membership and agreed to stay in touch on the matter.

Some time later, approximately five years ago, Mr. Walker telephoned to report that he had become acquainted with an individual who he believed might be interested in Club membership and asked if I was interested in getting to know the individual, with the possibility of ultimately acting as a cosponsor for Club membership if, after becoming acquainted with the individual, I agreed that he would be a good addition to the Club. I agreed, and we determined to attempt to arrange an opportunity for an acquaintanceship to develop. Some time later, Mr. Walker told me that he had not set up a get-together because the individual whom he had identified was being transferred out of the area because of a merger of his company. Some time later, both Mr. Walker and I learned that one or more blacks had been nominated to membership in the Club and that their names were on the Club's normal waiting list.

Neither Mr. Walker nor I have been active as officials of the Club and, therefore, can claim no direct credit for the ultimate inclusion of all minorities in Club membership. But it is simply untrue that Mr. Walker has been insensitive to the absence of minorities in the Club. Over a long period of time, Mr. Walker has been emphatic in expressing his view that the Club should welcome members without regard to race. While it is regrettable that The Olympic Club has not included as members persons of all races until fairly recently, the changes which recently have been made in the Club's membership practices are in large measure the product of support by persons such as Mr. Walker.

Very truly yours,

A. JAMES ROBERTSON II

AJR:mf

cc: Hon. Joseph R. Biden, Jr.
cc: Hon. Howell T. Heflin
cc: Hon. Dennis DeConcini
cc: Hon. Robert C. Byrd
cc: Hon. Charles E. Glassley
cc: Hon. Orrin G. Hatch
cc: Hon. Gordon J. Humphrey
cc: Hon. Edward M. Kennedy
cc: Hon. Howard M. Metzenbaum
cc: Hon. Paul Simon
cc: Hon. Alan K. Simpson
cc: Hon. Arlen Specter
cc: Hon. Strom Thurman

ADDENDUM C

President
Board of Supervisors
City and County of San Francisco

NANCY G. WALKER

May 23, 1988

Senator Patrick Leahy
Senate Judiciary Committee
U.S Senate
Washington D.C., 20510

Dear Senator Leahy:

As President of the Board of Supervisors, I want to once again bring to your attention resolution no. 123-88 which went into effect February 29, 1988 opposing the nomination of Vaughn R. Walker to the Federal Court of the Northern District of California.

Abby Ginzberg will be testifying on behalf of various legal groups and organizations. I believe that Ms. Ginzberg will fairly and accurately represent the sentiments of the Board of Supervisors as well as San Francisco's diverse communities.

Thank you for being receptive to the testimony Ms. Ginzberg will offer on behalf of San Franciscans.

Sincerely,

Nancy G. Walker

Nancy G. Walker

NGW/kmk:2122y-065

Room 235 • City Hall • San Francisco, California 94102 • (415) 554-5943

FILE NO. 178-88 RESOLUTION NO. 123-88

OPPOSING THE NOMINATION OF VAUGHN R. WALKER TO THE FEDERAL COURT OF THE NORTHERN DISTRICT OF CALIFORNIA

WHEREAS, Vaughn R. Walker's experience as a trial attorney has been limited to only three appearances before juries; and

WHEREAS, Mr. Walker has not handled any criminal matters in his years as an attorney; and

WHEREAS, Mr. Walker's sole experience with respect to civil rights legislation was to aggressively pursue the lawsuit of the United States Olympics Committee seeking to deny the use of the word "Olympics" by the "Gay Games;" and

WHEREAS, Mr. Walker went beyond the bounds of necessity and decency by securing a judgment against Dr. Tom Waddell and the Gay Games organizers, and placing a lien on Dr. Waddell's home when Dr. Waddell was battling his own AIDS diagnosis; and

WHEREAS, Mr. Walker refused to remove the lien against Dr. Waddell's home despite the fact that the courts had suspended the award which brought it about, and refused to remove the lien until after Dr. Waddell's death; and

WHEREAS, Mr. Walker consistently denied that the lien was in effect in total neglect of the truth; and

WHEREAS, Mr. Walker appears to have little regard for the life experiences of the average American, as evidenced by his having accepted in his years of law practice only one pro bono case; and

WHEREAS, His limited experience as an attorney, his lack of judicial experience, his seeming lack of integrity and his lack of compassion do not qualify him for the duties of a Federal judge; now, therefore, be it

RESOLVED, That the City and County of San Francisco opposes the confirmation of Vaughn R. Walker to the Federal Court of the Northern District of California; and be it

FURTHER RESOLVED, That copies of this Resolution be transmitted for signature to the Mayor, with the request that additional copies be sent to our representatives in the Fifth and Sixth Congressional Districts as well as to our United States Senators.

Adopted - Board of Supervisors, San Francisco February 16, 1988

Ayes: Supervisors Britt Gonzalez Hsieh Maher Nelder Silver Walker Ward

Absent: Supervisors Hongisto Kennedy Molinari

I hereby certify that the foregoing resolution was adopted by the Board of Supervisors of the City and County of San Francisco

John L Taylor

Clerk

File No.
178-88

Date Approved

Mayor

- -

February 29, 1988

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limitation as set forth in Section 2.302 of the Charter, becomes effective without his signature in accordance with the provisions of said Section 2.302 of the Charter.

John L Taylor

Clerk

File No. 178-88

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO
225 BUSH STREET
POST OFFICE BOX 7880
SAN FRANCISCO, CALIFORNIA 94120
TELEPHONE (415) 983-1000

LOS ANGELES
SUITE 3300
515 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 612-7500

SAN JOSE
333 WEST SANTA CLARA STREET
SAN JOSE, CALIFORNIA 95113
TELEPHONE (408) 947-4000

CABLE ADDRESS "EVANS"
TELEX 34743
TELECOPIER (415) 398-2096

WASHINGTON, D.C.
1667 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 887-0300

WALNUT CREEK
SUITE 800
1646 N. CALIFORNIA BLVD.
WALNUT CREEK, CALIFORNIA 94596
TELEPHONE (415) 946-2500

WRITER'S DIRECT DIAL NUMBER
(415) 983-1621

June 7, 1988

Re: Nomination of Vaughn R. Walker
For Appointment to the United States
District Court, Northern District
of California

VIA FEDERAL EXPRESS

The Honorable Patrick J. Leahy
United States Senate
SR-433 Russell Senate Office Building
Washington, DC 20150-4502

Dear Senator Leahy:

I urge you to vote favorably on the nomination of Vaughn Walker to the United States District Court. I have known Vaughn for 15 years, and have worked with him at Pillsbury, Madison & Sutro for over 13 years. He is an outstanding lawyer, an honorable person, a kind human being, and would bring distinction to the Northern District.

I am prompted to write this letter because I have received several telephone calls in the last few weeks from reporters and representatives of various women's groups soliciting my opinion of Vaughn, and asking me whether I thought Vaughn was prejudiced against women, minorities or gays. Your committee may have been asked these same questions about Vaughn, and I wanted to give you the benefit of my experience.

Let me start by saying I have been active in the women's rights movement, most recently serving on the California State Bar Committee on Women in the Law, and as one of three co-chairs of a published survey on the attitudes and practices towards women of law firms in California. I would be distressed by, and I would resist, the appointment of an individual who I felt was prejudiced against women, minority groups or gays. In all the years I have known Vaughn, he has never exhibited even a hint of such prejudice, nor have I seen or heard him treat another human being with anything other than courtesy and respect. Vaughn will decide cases on their merits and with common sense, and I would feel completely comfortable if he were assigned to adjudicate a case which raised issues bearing on the rights of women, minorities or gays.

I heartily endorse the nomination of Vaughn Walker, and I hope that your committee will approve his appointment to the bench.

Sincerely yours,

Mary B. Cranston

La Raza Lawyers Association of San Francisco
3130 24th Street • San Francisco, CA 94110 • (415) 285-7426

June 22, 1988

Honorable Patrick Leahy
Chair, Task Force on Federal
Judicial Nominations
United States Senate
433 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Leahy:

The San Francisco Raza Lawyers Asssociation would like to go on record as strongly opposing the nomination of Vaughn R. Walker for Federal Judge, Northern California District Court. As Latino lawyers committed to social and legal equality for our community, we are concerned by the lifetime appointment to the federal bench of a person with a demonstrated insensitivity to minorities, women and gays.

Mr. Walker's insensitivity and bias are a matter of public record: He is a member of the Olympic Club, an all male club that also excludes Blacks and Latinos from membership. Perhaps more telling, is Mr. Walker's refusal to relinquish his membership in this discriminatory organization unless ordered to do so by the Senate. Mr. Walker's unethical behavior in the U.S. Olympic case is now legend. His failure to remove the lien on the dying plaintiff's house in order to recover attorneys' fees is in itself reason to oppose and reject Mr. Walker's nomination. Mr. Walker's biases are particularly troubling given his trial court inexperience and his lack of familiarity with civil rights law and criminal law, all of which make up a substantial part of a federal district court judge's job.

On a more general note, the Raza Lawyer's Association opposes this nomination because it adds to the continuing racial and gender imbalance of the federal courts in Northern California. There are 18 federal judges serving Northern California. Of these one is female, one is Black, and one Latino. Of the five judges nominated by President Reagan, all have been white males. With only a few months left in President Reagan's term, the Senate Judiciary Committee should carefully consider what message it wants to send to the growing "minority" population of California and the rest of the country.

Yours truly,

Enrique Ramirez
President
La Raza Lawyer's Association

San Francisco
Women Lawyers Alliance

2111 Mission St., Ste. 401, San Francisco, CA 94110

May 24, 1988

The Honorable Patrick J. Leahy
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Re: Vaughn Walker
Nominee-U.S. District Court
Northern District of California

Dear Senator Leahy:

The San Francisco Women Lawyers' Alliance is an organization of feminist lawyers in the San Francisco Bay Area. We urge you not to confirm Vaughn Walker to the United States District Court for the Northern District of California. We oppose Mr. Walker's nomination because we believe that he is not the best candidate for the position. In addition, his appointment will not add to the racial, ethnic, or gender diversity of the Northern District bench and his nomination is apparently the result of a selection process which is totally secret and inappropriate for choosing a public servant.

While we do not contend that Mr. Walker is necessarily unqualified to sit as a U.S. District Judge (based on newspaper reports of his background and experience), we do not believe him to be the best qualified applicant. He does not appear to have demonstrated any particular scholarship, to have written any scholarly treatises, or to have distinguished himself as an outstanding trial lawyer. In addition, Mr. Walker has displayed little sensitivity to the rights of women and racial minorities, to judge from his membership in the Olympic Club, currently being sued by the City and County of San Francisco because of its refusal to change its membership policy excluding women and Blacks.

Moreover, the appointment of Mr. Walker, a white male from a large San Francisco law firm, would do nothing to make the the composition of the Northern District bench more reflective of the racial, ethnic, and gender composition of the Bay Area and Northern District legal profession, let alone the area population. The Northern District bench is currently all white male with the exception of one Black male, one Hispanic male, and one woman. There are no Asians. President Reagan's four appointments to the Northern District and all but one of his eight appointments to the Ninth Circuit are white males. The argument that this is for lack of qualified candidates is specious, since the previous administration appointed many qualified minorities, including the three who now sit on the Northern District.

This lack of diversity may result, however, from the selection process which is apparently used by Senator Wilson to choose judicial nominees. According to an article in the San Francisco Recorder (the local legal newspaper), nominees are chosen by a panel of "advisors," all white males, whose names are concealed from the public. There is no application process which can be followed by potential applicants. Presumably, the advisors select potential nominees from a pool consisting of acquaintances or acquaintances of acquaintances. Statistically, this process is likely to result in the selection of persons who reflect the demographic characteristics of the selectors and, if used by a private employer to fill vacancies, would quite likely be found to violate Title VII of the Civil Rights Act of 1964. Surely, a fairer and more open process should be used to choose important public servants who will be appointed for life.

Thank you for your consideration. If you have questions, you may contact me at (415)864-3405.

Sincerely,
Mary K. Gillespie
MARY K. GILLESPIE
Member, Board of Directors

City and County of San Francisco: **Office of City Attorney**

Louise H. Renne,
City Attorney

George A. Riley
Special Assistant to
the City Attorney
(415) 554-6221

August 8, 1988

By Federal Express

Steven J. Metalitz, Esq.
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Re: City and County of San Francisco v. The Olympic Club
San Francisco Superior Court No. 883-604

Dear Mr. Metalitz:

This letter responds to your inquiries to San Francisco City Attorney Louise H. Renne regarding the City's lawsuit against The Olympic Club.

During the judicial nomination hearing on Monday, June 13, 1988, Vaughn R. Walker made several statements regarding the membership policies of The Olympic Club. Mr.Walker testified that, "I believe The Olympic Club is a very good example of an organization that is in the process of change, has successfully completed substantial change, and has a promise of future change." (Transcript, page 41, lines 21-24.) Mr. Walker also stated that "The Club determined last year to begin a program of accelerated membership for blacks in The Olympic Club. In the past, there had been no formal exclusion of blacks or, indeed, any other racial minorities in the Club." (Transcript, page 38, lines 21-24.)

From its inception, the bylaws of The Olympic Club restricted membership to "only white male citizens of the United States of good moral character, integrity and reputation." (See the enclosed Memorandum of Points and Authorities in Support of the Motion for Preliminary Injunction, page 5.) This policy of racial segregation was challenged in 1967 when community groups and others brought pressure against the Club. Nevertheless, the Board of Directors unanimously elected to retain the whites only membership restriction. A year later, this ban against minorities was quietly dropped.

(415) 554-4283 Room 206 City Hall San Francisco 94102-4682

As demonstrated in the enclosed memorandum, the legacy of discrimination continues. In practice, the Club refused to admit blacks until the spring of 1988. Then, in response to the pending lawsuit, the Club announced that it admitted two black men into its membership of more than 4,700 voting members.

Mr. Walker also stated that the Club had engaged in negotiations with a women's athletic club to accommodate women as full participating members in the Club. We have no information to confirm this statement.

With regard to the Club's alleged progress, the Committee should be aware that four days before the hearing, on Thursday, June 9, The Olympic Club filed its First Amended Cross-Complaint against the City. In that action, the Club sought to halt the City's efforts to end the Club's discrimination by maintaining that the City maliciously breached the lease, violated the covenant of good faith and fair dealing and denied the existence of the lease itself. The Club alleged that the City violated the lease by seeking to redress the Club's invidious discrimination. The City filed a motion to dismiss the cross-claims as frivolous. On July 20, 1988, the Superior Court granted the City's motion and dismissed the Club's First Amended Cross-Complaint in its entirety.

In addition, The Olympic Club has attempted to take the deposition of the City Attorney, Louise H. Renne. The City views this action as harassment and as a violation of the attorney-client privilege as well as important protections for government officials. On July 27, the Superior Court granted a protective order prohibiting the Club from taking this deposition.

If you have any questions regarding the matters in this letter, please do not hesitate to call me.

Very truly yours,

LOUISE H. RENNE
City Attorney

George A. Riley
GEORGE A. RILEY
Special Assistant
to the City Attorney

GAR:css
21601

APPENDIX C

NOMINEE'S QUESTIONNAIRE RESPONSES

VAUGHN R. WALKER

Birth:	February 27, 1944	Watseka, Illinois
Legal Residence:	California	
Marital Status:	Single	
Education:	1962 - 1966	University of Michigan A.B. degree
	1966 - 1967	University of California
	1967 - 1968	University of Chicago Law School
	1968 - 1970	Stanford University Law School J.D. degree
Bar:	1972	California
Experience:	1970	Law Clerk, Appellate Department Los Angeles County Superior Court
	1971 - 1972	Law Clerk to Hon. Robert J. Kelleher, U.S. District Court, California Central
	1972 - present	Pillsbury, Madison & Sutro Associate (1972-1977) Partner (1978-present)
Office:	225 Bush Street Post Office Box 7880 San Francisco, California 94120 415 983-1500 415 983-1000	
Home:	40 Calhoun Terrace San Francisco, California 94133	

To be United States District Judge for the Northern District of California

RESPONSES OF VAUGHN R. WALKER
TO SENATE COMMITTEE ON THE
JUDICIARY QUESTIONNAIRE FOR
JUDICIAL, UNITED STATES ATTORNEY
AND DEPARTMENT OF JUSTICE NOMINEES

January 12, 1988

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (including any former names used).

Vaughn Richard Walker.

2. Address: List current place of residence and office address(es).

Residence: 40 Calhoun Terrace, San Francisco, California 94133.

Office: 225 Bush Street, San Francisco, California 94104.

Mailing Address: Post Office Box 7880, San Francisco, California 94120.

3. Date and place of birth: February 27, 1944 at Watseka, Illinois.

4. Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Single.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Michigan, Ann Arbor, Michigan, 1962-1966, A.B. degree 1966;

University of California, Berkeley, California, 1966-1967;

University of Chicago Law School, Chicago, Illinois, 1967-1968;

Stanford University Law School, Stanford, California, 1968-1970, J.D. degree 1970.

6. Employment record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

May 1966-September 1966 and June 1968-August 1968: United States Securities & Exchange Commission, Washington, D.C., intern economist.

September 1970-December 1970: Los Angeles Superior Court, Appellate Department, Los Angeles, California, law clerk.

January 1971-August 1972: United States District Court, Central District of California, Los Angeles, California, law clerk.

September 1972-present: Pillsbury, Madison & Sutro, San Francisco, California, attorney (associate 1972-77; partner 1978-present).

1981-present: Lawyers' Club of San Francisco, San Francisco, California, President and various other officer and director positions; see response to question 9 for particulars.

1979-1983: Junior Achievement of the Bay Area, Inc., South San Francisco, California, Director.

1980-1988: Theater of Yugen, San Francisco, California, Director.

1967-1988: V. R. Walker Co., Watseka, Illinois, Vice President/Director.

1967-1988: Vaughn R. Walker, Inc., Watseka, Illinois, Vice President/Director.

7. Military service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

A.B. with distinction and high honors, University of Michigan, 1966.

Woodrow Wilson Fellowship, University of California (Berkeley), 1966-1967.

American Bar Foundation Fellow, 1987.

9. Bar associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Lawyers' Club of San Francisco, 685 Market Street, Suite 750, San Francisco, California 94105: 1987-present, Immediate Past President; 1986-1987, President; 1985-1986, President Elect; 1984-1985, Vice President; 1983-1984, Treasurer; 1983, Secretary; 1981-1983, Member, Board of Governors.

Bar Association of San Francisco, 685 Market Street, San Francisco, California 94105: 1974-1978, Bridging the Gap Program Co-Chairman.

State Bar of California, 555 Franklin Street, San Francisco, California 94102, member.

American Bar Association, 750 North Lakeshore Drive, Chicago, Illinois 60611, member.

American Bar Foundation, 750 North Lakeshore Drive, Chicago, Illinois 60611, member.

United States District Court, Northern District of California Historical Society, 450 Golden Gate Avenue, Post Office Box 36112, San Francisco, California 94102, member.

Stanford Law Society, c/o Stanford Law School, Stanford, California 94305, member.

10. Other memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

University Art Museum, 2626 Bancroft Way, Berkeley, California 94720.

San Francisco Museum of Modern Art, 401 Van Ness Avenue, San Francisco, California 94102-4582.

The Olympic Club, 524 Post Street, San Francisco, California 94102.

American Saddlebred Horse Association, 4093 Iron Works Pike, Lexington, Kentucky 40511.

University of Michigan Alumni Association, Ann Arbor, Michigan 48105.

Stanford Buck/Cardinal Club, c/o Athletic Department, Stanford University, Stanford, California 94305.

Commonwealth Club of California, 681 Market Street, San Francisco, California 94103.

11. Court admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of California, admitted June 2, 1972.

United States District Courts:

- Central District of California, admitted June 12, 1972.
- Northern District of California, admitted July 16, 1973.
- Eastern District of California, admitted July 16, 1985.

United States Courts of Appeals:

- Ninth Circuit, admitted July 3, 1972.
- Fifth Circuit, admitted June 16, 1977.
- Tenth Circuit, admitted January 16, 1978.

Supreme Court of the United States, admitted October 4, 1982.

United States Claims Court, admitted March 2, 1987.

12. Published writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. November 17, 1987.

14. Judicial office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your

substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Member, California Law Revision Commission, appointed by the Governor of California, December 11, 1986 and confirmed 38-0 by California State Senate on June 18, 1987.

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Law clerk, Appellate Department, Los Angeles County Superior Court, September 1970-December 1970.

Law clerk to Honorable Robert J. Kelleher, United States District Court, Central District of California, January 1971-July 1972.

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Pillsbury, Madison & Sutro, 225 Bush Street, San Francisco, California 94104: associate attorney, September 1972-December 1977; partner, January 1978-present.

b.

1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Civil litigation. From the commencement of practice in 1972 to approximately 1977, most of my work centered on antitrust litigation in which I was an associate attorney performing the tasks of research, writing, interviewing witnesses, trial preparation, with occasional opportunities to participate directly in pretrial discovery matters, law and motion argument and like activities. In addition, approximately one fourth to one third of my time during the first five years or so of practice was spent working on relatively small cases involving business disputes or personal injury matters.

In the period beginning approximately 1977 to date, my practice has continued to be civil litigation, but of a much more generalized nature, with an emphasis upon securities law, contracts, business torts, antitrust, land use and constitutional law. In most of the matters in which I have been engaged since 1977, I have been the senior or supervising attorney, responsible for all aspects of the work, including supervision of work by other lawyers.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During the 1972-1977 period, the clients on whose behalf I worked included Standard Oil Company of California (now Chevron Corporation); Safeway Stores Incorporated; Joseph E. Seagram & Sons, Inc.; Monsanto Corporation, among others. In the personal injury cases, the principal client for whom I performed services was Pacific Telephone & Telegraph Co., while the other small case matters were on behalf of a variety of small-to medium-sized businesses.

During the period since 1977, the clients for whom I have performed services have included large business entities such as Caterpillar Tractor Co.; The Continental Corporation, among others. A larger part of my practice has been on behalf of family-owned business entities (e.g., Big Creek

Lumber Co., Sebastiani Vineyards, Inc.) and individuals having substantial business interests. In addition, I have represented substantial nonprofit organizations, including the United States Olympic Committee and International Olympic Committee, among others.

c.

1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

At all times during my practice, I have made frequent or fairly frequent court appearances.

2. What percentage of these appearances was in:

(a) federal courts;

(b) state courts of record;

(c) other courts.

Approximately half of these appearances have been in federal court, while the other half have been in state courts of record.

3. What percentage of your litigation was:

(a) civil;

(b) criminal.

All but a negligible part of my practice has been civil litigation, as distinguished from criminal litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

During approximately the most recent five or six year period, I have tried to verdict or judgment (rather than settled) eight cases, and served as chief trial counsel in all of them.

5. What percentage of these trials was:

(a) jury;

(b) non-jury.

Approximately 25% of these cases tried to verdict or judgment were jury cases.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. State of California v. County of Santa Clara (1983) 142 Cal.App.3d 608, 191 Cal.Rptr. 204.

I served as chief counsel at all stages of litigation for owners of timberland (the Walshes) in an action to require Santa Clara County to adopt provisions of the California Forest Taxation Reform Act of 1976. For over three years, the County had refused to adopt a local implementing ordinance, as required by the Act and the Walshes filed a petition to mandate the County to adopt such an ordinance. The petition "galvanized" the County to enact its ordinance (142 Cal.App.3d at 615) but, in doing so, the County inserted an unauthorized requirement of a land use permit. At stake for the Walshes was their ability to dedicate 2,300 acres of redwood timberland to permanent sustained yield timber harvest production and its property taxation in accordance with the Act.

"Because they did not believe the ordinance was in line with the statute, the Walshes amended their original complaint, encouraged the State's action [which was precipitated by the Walshes], and secured consolidation of the two. The Walshes, in other words, were the moving force in securing benefits which, obviously, they desired, but which the County had a statutory duty to provide for the good of the general public" (142 Cal.App.3d at 615). The Walshes obtained an award of attorneys' fees under the Private Attorneys General Statute (Cal.Code Civ.Proc., § 1021.5). The Walshes' petition with the County was filed in January 1980.

The California Court of Appeal, First District, Division Three, handed down its decision on May 3, 1983. The trial court judge was the late Bruce F. Allen of the Santa Clara County Superior Court. The Court of Appeal justices were Clinton W. White, Presiding Justice, and Associate Justices Sidney Feinberg and Betty Barry-Deal. Opposing counsel was Robert J. Menifee, Deputy County Counsel, County Government Center, East Wing, 70 West Hedding Street, San Jose, CA 95110, (408) 299-2111. Counsel for the State included R. H. Connett, Assistant Attorney General, M. Anne Jennings and Peter Van der Naillen, deputy Attorneys General, 6000 State Building, 350 McAllister Street, San Francisco, CA 94102, (415) 557-2544.

2. Legislature v. Deukmejian (1983) 34 Cal.3d 658, 194 Cal.Rptr. 781, 669 P.2d 17.

I represented real parties in interest, proponents of congressional and state legislative reapportionment initiatives, in extraordinary writ proceedings before the California Supreme Court brought by the Legislature of California seeking to enjoin the Governor of California and other state officials from conducting a special statewide election on our clients' initiatives. For analysis of the significance of the case and the Supreme Court's decision, see Collins, "Judicial Intervention in the Pre-Election Stage of the Initiative Process: A Change of Policy by the California Supreme Court," 15 Pac.L.Jour. (July 1984) 1127 and Eastman, "Squelching Vox Populi: Judicial Review of the Initiative in California," 25 Santa Clara L.Rev. (1985) 529.

The Supreme Court handed down its decision on September 15, 1983. One highly respected former jurist and academic, while refusing to assert that the outcome of the case was evidence of partisan bias of the California Supreme Court, termed the majority's reasoning "superficial" and the dissent "much more sound" (Thompson, "Judicial Independence, Judicial Accountability, Judicial Elections, and the California Supreme Court: Defining the Terms of the Debate," 59 So.Cal.L.Rev. (1986) 809). The Justices of the California Supreme Court which heard the case were Chief Justice Rose Elizabeth Bird and Associate Justices Stanley Mosk, Otto M. Kaus, Frank K. Richardson, Cruz Reynoso, Allen Broussard and Joseph R. Grodin. Principal opposing counsel included Joseph Remcho, Remcho, Johansen & Purcell, 220 Montgomery Street, Suite 800, San Francisco, CA 94104, (415) 398-6230; Richard H. Borow, Jonathan H. Steinberg, Irell & Manella, 1800 Avenue of the Stars, Suite 900, Los Angeles, CA 90067, (213) 277-1010. Opposing amici curiae briefs were submitted, among others, by Ephraim Margolin, 240 Stockton Street, 3rd Floor, San Francisco, CA 94108, (415) 421-4347; Marsha S. Berzon, Fred H. Altshuler, Stephen P. Berzon, Michael Rubin, Altshuler & Berzon, 177 Post Street, Suite 600, San Francisco, CA 94108, (415) 421-7151; Charles P. Scully, Donald C. Carroll, Charles P. Scully II, 220 Bush Street, Mills Tower, 20th Floor, San Francisco, CA 94104 (415) 362-0241. Counsel for the Governor of California: Vance W. Raye, Legal Affairs Secretary, Governor's Office, State Capitol, Sacramento, CA 95814, (916) 445-0873. Counsel for the Secretary of State: Richard P. Martland, Chief Assistant Attorney General, N. Eugene Hill and Paul H. Dobson, deputy Attorneys General, 1515 K Street, Sacramento, CA 95814, (916) 445-9555.

3. International Olympic Committee v. San Francisco Arts & Athletics (N.D.Cal. 1982) 219 U.S.P.Q. 983, affirmed (9 Cir. 1983) 707 F.2d 517, affirmed sub nom. San Francisco Arts & Athletics v. Olympic Committee (1987) ___ U.S. ___, 107 S.Ct. 2971, 97 L.Ed.2d 427.

In this action, I represented the International Olympic Committee and the United States Olympic Committee in trade name and trademark litigation under the Amateur Sports Act of 1978 (36 U.S.C. § 380, et seq.) and other laws. The District Court proceedings were commenced in August 1982. Judge Samuel Conti issued a temporary restraining order and order to show cause in favor of the committees; Chief Judge Robert F. Peckham issued a preliminary injunction which was affirmed by the Ninth Circuit (707 F.2d 517). Judge John P. Vukasin issued a final judgment and awarded attorneys' fees to the committee. The Ninth Circuit affirmed the judgment on the merits but remanded for further proceedings on attorneys' fees (781 F.2d 733) and later denied rehearing en banc with three judges dissenting (789 F.2d 1319). The Supreme Court granted certiorari and, on June 25, 1987, affirmed judgment on the merits for the committees. I personally handled the case at all stages except in the Supreme Court. Following the Supreme Court decision, the case was returned to the District Court for further proceedings on the attorneys' fees issue; a settlement was agreed to by the parties under which the committees waived the recovery of attorneys' fees.

At stake in the litigation was the statutory program enacted by Congress to fund United States participation in the Olympic Games and other amateur athletic activities (e.g., the Special Olympics for disabled persons, Junior Olympics, Explorer Olympics, United States participation in the Pan American Games) through licensing of "Olympic" and related designations. Co-counsel was Richard G. Kline, Kline, Rommel & Colbert, One Farragut Square South, 7th Floor, Washington, DC 20006, (202) 393-5200.

Opposing counsel: Mary C. Dunlap, Dunlap & Thorkelson, 1599 Dolores Street, San Francisco, CA 94110, (415) 282-6555 and Susan McGrievy, American Civil Liberties Union, 633 Shatto Place, Los Angeles, CA 90005, (213) 487-1720. Opposing amicus counsel Ephraim Margolin, 240 Stockton Street, 3rd Floor, San Francisco, CA 94108, (415) 421-4237.

4. MacLeod v. County of Santa Clara (9 Cir. 1984) 749 F.2d 541, certiorari denied (1985) 472 U.S. 1009, 105 S.Ct. 2705.

I tried to the court and handled the appeal of a property owner in an action under section 1983 of the Civil Rights Act of 1871 to obtain an award of inverse condemnation damages. This action followed a series of administrative proceedings, trials, appeals and extraordinary writ proceedings on behalf of the same party in state courts on related questions of state law (see, e.g., MacLeod v. Superior Court (1982) 179 Cal.Rptr. 520). Plaintiff's theory was that his property had been subjected to such an unreasonable level of regulation that he was entitled to relief for a taking without just compensation in violation of the Fifth Amendment. The theory was based upon dictum in Pennsylvania Coal Co. v. Mahon (1922) 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (Holmes, J.). The action was tried in March 1983 before the Honorable Robert F. Peckham, Chief Judge, and argued in the Ninth Circuit in October 1984 before Judges Arthur L. Alarcon, William A. Norris and Jerome Farris. Certiorari was denied by the United States Supreme Court on June 10, 1985. The significance of the case lies in the fact that two years later the United States Supreme Court used the same theory as advocated on behalf of MacLeod in holding that excessive regulation may constitute a taking of property unless validated by payment of just compensation (First English Evan. Luth. Ch. v. Los Angeles Cty. (1987) ___ U.S. ___, 107 S.Ct. 2378). Opposing counsel were Robert J. Menifee and Robert A. Weers, deputy County Counsel, County Government Center, East Wing, 70 West Hedding Street, San Jose, CA 95110, (408) 299-2111.

5. Doe v. City and County of San Francisco (1982) 136 Cal.App.3d 509, 186 Cal.Rptr. 380.

In this case, I served as lead counsel for owners of hand guns in a proceeding which invalidated a local ordinance enacted by the City and County of San Francisco prohibiting hand gun possession. The matter was an original extraordinary writ proceeding in the California Court of Appeal, First District, Division Three (Clinton W. White, Presiding Justice, Sidney Feinberg and Betty Barry-Deal, associates justices) which decided the matter favorably to the position of our clients on October 13, 1982. Although principally responsible for the case, I did not argue in the Court of Appeal. Opposing counsel were William F. McCabe (deceased), Jacobs, Sills & Coblentz (now Coblentz, Cahen, McCabe & Breyer), One Embarcadero Center, 30th Floor, San Francisco, CA 94111, (415) 391-4800; Dirk M. Schenkkan, Howard, Rice, Nemerovski, Canady, Robertson & Falk, Three Embarcadero Center, San Francisco, CA 94111, (415) 434-1600; Robert A. Thompson, Pettit & Martin, 101 California Street, Suite 3500, San Francisco, CA 94111, (415) 434-4000; George Agnost (deceased), City Attorney, Burk E. Delventhal, Deputy

City Attorney, 206 City Hall, San Francisco, CA 94102, (415) 558-3559; co-counsel were Jeremiah F. Hallisey, O'Brien & Hallisey, One California Street, Suite 2245, San Francisco, CA 94111, (415) 433-5300 and Don B. Kates, Jr., California Rural Legal Assistance, 1212 Market Street, San Francisco, CA 94102, (415) 863-4911.

6. Zylstra v. Safeway Stores, Inc. (5 Cir. 1978) 578 F.2d 102.

In this case, I represented a major food retailer defendant (i.e., Safeway Stores, Incorporated) in an antitrust class action by and on behalf of growers of Florida processing oranges. The issue of class certification was litigated and after successfully disqualifying the law firm representing the class representative, the action settled, but the class certification issue resulted in the above-cited published decision which was handed down on August 9, 1978. The trial court judge was the Honorable Ben Krentzman of the United States District Court in Tampa, Florida. Counsel for another defendant argued the case in the Fifth Circuit, but I had personally handled all matters in the trial court and participated heavily in preparation of the appellate briefs. Opposing counsel were Allan Raywid and Burt A. Braverman, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006, (202) 659-9750. Co-counsel for Safeway were David S. Batcheller, Smathers & Thompson, Alfred I. duPont Building, Miami, FL 33131, (305) 379-6533. Counsel for the other defendants were:

Leonard A. Spivak, Cahill, Gordon & Reindel, 80 Pine Street, New York, NY 10005, (212) 944-7400; T. Paine Kelly, Jr., Mcfarlane, Ferguson, Allison & Kelly, Post Office Box 1531, Tampa, FL 33601, (813) 223-2411; Sylvia A. Walbolt, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Post Office Box 3239, Tampa, FL 33601, (813) 223-5366; Harry Kemker (deceased), Trenham, Simmons, Kemker, Scharf & Barkin, Post Office Box 1102, Tampa, FL 33681, (813) 223-7474; Raymer F. Maguire, Maguire, Voorhis & Wells, Post Office Box 633, Orlando, FL 32802, (305) 843-4421.

7. Carma Developers (California), Inc. v. Marathon Development, Inc., San Francisco Superior Court No. 813 469.

This action was initiated by the tenant against the owner of a highrise office building in San Francisco which I represented (i.e., Marathon, U.S. Realties, Inc.). The issues related to the building owner's refusal to consent to an assignment of the tenant's lease pursuant to a negotiated contractual provision which gave the building owner the right to recapture the leasehold in the event of the tenant's sublease or assignment of the leasehold. The significance of the case lies in the contention of our client that parties to commercial a real estate lease may by express provision negotiate away the implied obligations of good faith and fair dealing which would otherwise require that the landlord must have good cause to refuse consent to the tenant's assignment or subletting of his leasehold interest. To that end, I represented the defendant in the instant case and other commercial landlords in amicus participation in Kendall v. Ernest Pestana, Inc. (1985) 40 Cal.3d 488, 220 Cal.Rptr. 818, 709 P.2d 837. In dicta of the opinion in the latter case, the California Supreme Court indicated that commercial parties may negotiate modifications of obligations of good faith and fair dealing which would otherwise be imposed by operation of law (40 Cal.3d at 505, n. 17).

The Carma case was tried to a jury in September 1985 in a two-week trial before the Honorable Thomas Dandurand. Certain of the claims had been summarily adjudicated in pretrial motion practice by the Honorable Stuart R. Pollak.

Opposing counsel were Richard A. Horning, D. Peter Harvey, Horning, Janin & Harvey, 601 Montgomery Street, Suite 720, San Francisco, CA 94104, (415) 434-1081.

8. Foster v. Khashoggi, et al., United States District Court, Northern District of California No. C 76-1469 CFP.

In this action, I defended controlling shareholders of a publicly traded company in a federal securities laws class action arising out of a "going private" transaction in which the clients I represented purchased minority shareholders' stock. The action was litigated before the Honorable Cecil F. Poole, then a District Court judge, now a judge of the United States Court of Appeals for the Ninth Circuit.

The significance of the case lies in the fact that it was one of the early cases in which the courts approved a "freeze out" of minority shareholders' interests pursuant to a plan for an independent appraisal of the minority shareholders' interests and buy-out based upon the appraisal. Judgment was entered in the case on September 14, 1978. Opposing counsel were Jeffrey P. Knudsen, then of Boone, Knudsen & Martin (Mr. Knudsen's current address and telephone number are 862 Folsom Street, San Francisco, CA 94107, (415) 543-6600) and Jeffrey J. Parish, Rosenblum, Parish & Bacigalupi, 555 Montgomery Street, San Francisco, CA 94104, (415) 421-8232. Co-counsel for another defendant were Charles E. Hanger, Franklin Brockway Gowdy, Brobeck, Phleger & Harrison, One Market Plaza, Spear Street Tower, San Francisco, CA 94105, (415) 442-0900.

9. Abbey v. Computer & Communications Technology Corp., Delaware Chancery Court No. 6941.

In this action, I defended Everett T. Bahre, the Chief Executive Officer of Computer & Communications Technology Corp., and William R. Hambrecht, an outside director of CCT and a principal in the investment banking firm Hambrecht & Quist. The suit was a derivative action applying the law of the State of Delaware in which CCT was incorporated.

The case's significance lies in its application of the principles of Zapata Corp. v. Maldonado (Del. 1981) 430 Atl.2d 779, 788, pursuant to which a new director was appointed to the board to investigate plaintiff's claims and recommended dismissal of the action in the exercise of "independent business judgment." The matter was litigated before Honorable Grover C. Brown, Chancellor, Delaware Court of Chancery and thereafter settled pursuant to releases dated October 11, 1984.

Opposing counsel was Arthur N. Abbey, Abbey & Ellis, 212 E. 39th Street, New York, NY 10016, (212) 889-3700. Co-counsel were John J. Cost, Irell & Manella, 1800 Avenue of the Stars, Suite 900, Los Angeles, CA 90067, (213) 277-1010; William O. LaMotte III, Morris, Nichols, Arsht & Tunnell, Twelfth & Market Streets, Post Office Box 1347, Wilmington, DE 19899-1347, (302) 658-9200; Robert K. Payson, Potter, Anderson & Corroon, 350 Delaware Trust Building, Post Office Box 951, Wilmington, DE 19899-0951, (302) 658-6771. John L. Endicott, Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, CA 90071, (213) 299-7000, represented the outside consultant/director.

10. Brown v. Superior Court (Martin case) (1982) 33 Cal.3d 242, 188 Cal.Rptr. 425, 655 P.2d 1260; Brown v. Superior Court (Wall case) (1982) 137 Cal.App.3d 778, 187 Cal.Rptr. 324.

In these related cases, I represented taxpayer litigants in extraordinary writ proceedings regarding legislation creating state appellate judgeships. In the Martin case, Paul R. Haerle of Thelen, Marrin, Johnson & Bridges, a San Francisco law firm, and I were employed following the decision of the California Supreme Court on November 1, 1982 to obtain a rehearing in the case or other relief. Application was made to the Supreme Court to vacate a stipulation of finality filed two days after the Court's decision and one day after the gubernatorial election of 1982. This stipulation had been filed on behalf of the taxpayer litigants but without their knowledge or consent (see 33 Cal.3d at 257-258). The petition for rehearing was filed on November 16, 1982. Two days later, the Supreme Court vacated the stipulation of finality but made its decision "final forthwith" on its own, making it possible for the state appellate judgeships to be filled by outgoing Governor Edmund G. Brown, Jr. rather than newly elected Governor George Deukmejian. The significance of these events is described in the dissent of Justice Richardson and the reply to that dissent filed later by Justice Reynoso (see 33 Cal.3d at 258-266). The Supreme Court justices voting to deny rehearing and for immediate finality were Newman and Reynoso, with two Court of Appeal justices, Gerald Brown and White, sitting by designation and concurring. Appeal court justices Caldecott and Franson were also sitting by designation and concurred with Justice Richardson.

The *Wall* case was an even more unusual judicial response. Mr. Haerle and I represented taxpayer litigants in pursuing issues which had been left undecided in the *Martin* case. The *Wall* action was filed November 19, 1982 and a temporary restraining order issued on that same day by the Honorable Jay Pfotenhauer (now retired) of the San Francisco Superior Court. The return on the order to show cause and temporary restraining order was November 23, at which time the California Court of Appeal, First District, Division One, on its own motion ordered the case transferred to its own docket *before* any hearing or decision by Judge Pfotenhauer. The Court of Appeal conducted a hearing the very afternoon it transferred the case to its own docket, allowed six days (until November 28) for additional briefing and entered a decision on November 29, 1982 vacating the trial court's restraining order and staying all subsequent proceedings in the trial court. As a result of the extraordinary dispatch with which the *Wall* case was disposed of by the Court of Appeal, outgoing Governor Brown was able to make nominations for the new judgeships and hearings before the Commission on Judicial Appointments were able to be conducted before the end of Governor Brown's term of office on January 3, 1983, and the assumption of office by Governor Deukmejian. The Court of Appeal justices who rendered the decision in the *Wall* case were John T. Racanelli, William A. Newsome, Jr. and Joseph A. Rattigan, who had been assigned to the case by the then Acting Chairperson of the Judicial

Counsel who was Justice Reynoso of the California Supreme Court.

Opposing counsel: Richard D. Martland, assistant Attorney General, 1515 K Street, Sacramento, CA 95814, (916) 445-9555. Co-counsel were Paul R. Haerle, James Hargarten, Thelen, Marrin, Johnson & Bridges, Two Embarcadero Center, 21st Floor, San Francisco, CA 94111, (415) 392-6320.

Opposing amici counsel were Fred H. Altshuler, Altshuler & Berzon, 177 Post Street, Suite 600, San Francisco, CA 94108, (415) 421-7151; Arne Werchich, Werchich & Werchich, 601 Montgomery Street, 20th Floor, San Francisco, CA 94111, (415) 392-0881.

19. Legal activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued outside litigation consist of work in professional activities, such as the Lawyers' Club of San Francisco, of which I was recently President, and other professional organizations. In addition, since appointment in December 1986, I have served as a member of the California Law Revision Commission, which is charged with the responsibility of studying appropriate revisions and reform of law. At the present time, the Commission is engaged in a complete revision of the California probate laws.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am currently negotiating a severance arrangement with my law firm, Pillsbury, Madison & Sutro. Although the terms of that arrangement have not been determined, they will provide for payment of an exact amount. When that amount and the terms of payment have been determined, I shall file a supplemental response. Except for such an arrangement, I do not anticipate any other benefits of the type referred to in this question.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Before assuming judicial office, I will sever completely my relationship with Pillsbury, Madison & Sutro, the law firm with which I have practiced for 15 years, including removal of funds from the firm's retirement plans and other investment programs. The association with that firm I anticipate will be the principal source of any potential conflicts of interest which I might encounter in judicial office. It has been customary in the Northern District of California for lawyers who become judges not to accept cases in which their former law firm is counsel until they have been on the bench for a period of time sufficient to remove any appearance of a conflict of interest. Applicable canons of judicial conduct require that I not participate in any case in which my firm is active counsel until the full amount of severance benefits has been paid. I would plan not to participate in any matter in which my firm is active counsel for an additional period thereafter and determine the period of time appropriate after consultation with the Chief Judge of the Northern District of California and perhaps other judges on the court who have faced a similar situation. Except as noted, I do not anticipate any other potential conflicts of interest except possibly for cases in which a corporation in which I own stock is a party and I do not anticipate that these problems will be difficult to resolve because the number of such companies is small and the shareholdings are insignificant in relationship to the total shares outstanding.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No, except that I plan to continue serving as a director of two very small family corporations. The time entailed in discharging duties associated with these corporations is negligible.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

INCOME ITEMS		1986 AMOUNT		1985 AMOUNT
Pillsbury, Madison & Sutro		$164,052		$183,622
Interest Income				
Bank of California	$2,079		$ 805	
Gilbraltar S&L	95		1,274	
		2,174		2,079
Dividend Income				
General Motors	507		502	
Great Western Financial	230		188	
Transamerica	340		330	
T. Rowe Price Prime Reserve	32		38	
		1,109		1,058
State Tax Refund		4,862		4,009
Net Capital Gain		807		--
S Corporation Income (V. R. Walker Co.)		--		201
Directors' Fees (V. R. Walker Co.; Vaughn R. Walker, Inc.)		2,000		2,000
Gifts		--		20,000
		$175,004		$212,969

The sources of income for 1987 will be substantially the same as for 1985 and 1986. As reflected in the financial statement submitted with these responses, I have vested interests in various retirement plan accounts at my law firm and an individual retirement account which generated value that was re-invested. Because this value does not appear to be "income" as used in this question, it is not set forth in this response, although this information could be supplied if the Committee deems it appropriate.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attachment.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1986, I was one of many co-chairmen for San Francisco in the re-election campaign of Governor George Deukmejian of California. In several campaigns over the years, I have had my name listed as a supporter on dinner committees and committees for various events for the following candidates: U.S. Senator Pete Wilson, Ed Zschau for U.S. Senate, Milton Marks for Congress, President Ronald Reagan. In 1976, I served as co-chairman of the San Francisco Speakers Bureau in the Ford for President campaign.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In addition to professional and community service activities, some of which may have been indirectly beneficial to the disadvantaged, I have personally handled legal matters for and advised the Wing Kwan family, whose members immigrated to the United States from China. Only two matters handled for members of this family were formally entered into the time records of my firm, a physical injury claim in 1979 for Yuk Ying Kwan and a personal matter in 1983 for So Ching Kwan, so it is impossible to determine the amount of time devoted to these matters.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

Since 1974 or 1975, I have been a member of The Olympic Club, an athletic club in San Francisco. Although the Club did not have a formal policy of excluding minorities from membership at any time while I have been a member, there were until recent years no members who belonged to racial minorities. I understand that is no longer true, but I believe the Club still has no black members. I have been told that situation is expected to change shortly. Several years ago, I discussed with another member the possibility of sponsoring a black acquaintance for membership, hoping that the Club was ready to act favorably. I am not personally active in the Club's governance, but have expressed to friends or acquaintances who are active in the Club's governance my distaste for the Club's slowness in accepting minority members.

The Club does have a formal policy of limiting full membership (except in certain golf sections) to men. The Club is presently a defendant in a lawsuit by the City and County of San Francisco challenging this policy. I supported a Club referendum to admit women to full membership and implement a policy of affirmatively encouraging minority membership. These steps are long overdue and I believe that through the City's litigation or otherwise these steps will in time be taken.

Although I frequently use and enjoy the Club's athletic facilities, if the Committee deems it appropriate I am prepared in the event of confirmation or at an earlier time to give up membership in the Club unless by that time the situation at the Club has changed.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I believe that Senator Wilson has a committee which advises him on judicial nominations and it is my understanding that the committee reviewed my possible nomination. I have had an interest in becoming a United

States District Judge since my service as a law clerk for the Honorable Robert J. Kelleher. The first awareness that I was under consideration for nomination was about January or February 1986, when I was asked by a newspaper reporter to confirm that inquiries were being made about my possible nomination to a vacancy on the Northern District of California bench created by Judge William Orrick taking senior status. Sometime thereafter, John Davies, a San Diego lawyer who I understand works with Senator Wilson on judicial nominations, asked to interview me about a possible nomination and did so on April 22, 1986. I furnished Mr. Davies information about my background and law practice. Later, Mr. Davies telephoned me to say that Deputy Attorney General D. Lowell Jensen would be recommended by Senator Wilson for the Orrick vacancy on the Northern District bench.

In early 1987, Mr. Davies telephoned me to report that he wanted to include my name along with others for recommendation by Senator Wilson to a new vacancy on the Northern District bench created by Judge Spencer Williams taking senior status. On July 24, 1987, Senator Wilson telephoned me and said that he planned to submit my name to the Department of Justice for Judge Williams' position. Shortly thereafter, I was invited to interview at the Department and did so on August 13, 1987. At that time, I spoke to Assistant Attorney General Stephen J. Markman and Steven A. Matthews, H. Robert Shower and Seth Liebman. After these meetings, I was notified that a background check by the Federal Bureau of Investigation would begin. I had some telephone conversations thereafter with Mr. Markman about the processing of a possible nomination. I prepared responses to questionnaires by the FBI, the Justice Department and the American Bar Association. On November 11, 1987, I was interviewed by Samuel Williams, one of the Ninth Circuit members of the ABA Standing Committee on Federal Judiciary.

President Reagan telephoned me on December 18, 1987 and told me that he planned to nominate me to the Northern District of California bench.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Jurisdiction of the federal courts is limited by Article III to actual cases and controversies under the Constitution and laws of the United States. Although the resolution of such cases and controversies may, at times and unavoidably, have far-reaching implications, I do not believe that it is the province of federal judges to seek out ways to effect social, political or economic changes through exercise of judicial powers.

i).

AFFIDAVIT

I, VAUGHN R. WALKER, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12 January 1988
(DATE)

(NAME)

OFFICIAL SEAL
GEORGE GUISTI
NOTARY PUBLIC — CALIFORNIA
San Francisco County
My Commission Expires Nov. 24, 1989

George Guisti
(NOTARY)

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS	
Cash on hand and in banks	38055 00
U.S. Government securities—add schedule	
Listed securities—add schedule	12111 00
Unlisted securities—add schedule	
Accounts and notes receivable:	
Due from relatives and friends	
Due from others	
Doubtful	
Real estate owned—add schedule	90000 00
Real estate mortgages receivable	
Autos and other personal property	40000 00
Cash value—life insurance	
Other assets—itemize:	
I.R.A.	17136 00
Retirement Plans	356733 00
Evans Venture Partners	10000 00
Saddlebred gelding	12500 00
Total assets	576535 00

LIABILITIES	
Notes payable to banks—secured	
Notes payable to banks—unsecured	
Notes payable to relatives	
Notes payable to others	12 317 00
Accounts and bills due	10 039 00
Unpaid income tax	
Other unpaid tax and interest	
Real estate mortgages payable—add schedule	
Chattel mortgages and other liens payable	
Other debts—itemize:	
Total liabilities	22356 00
Net worth	554179 00
Total liabilities and net worth	576535 00

CONTINGENT LIABILITIES	
As endorser, comaker or guarantor	none
On leases or contracts	none
Legal Claims	none
Provision for Federal Income Tax	*
Other special debt	none

GENERAL INFORMATION	
Are any assets pledged? (Add schedule.)	no
Are you defendant in any suits or legal actions?	no
Have you ever taken bankruptcy?	no

All assets are listed at cost or current value as of the date indicated on the attached schedules.

* Estimated Federal income taxes paid through September 15, 1987 are $21,196.

SCHEDULE TO FINANCIAL STATEMENT - NET WORTH

1. Cash on hand and in banks	
The Bank of California - checking (October 22, 1987)	(51)
The Bank of California - money market (October 6, 1987)	27,535
The Bank of California - certificate of deposit	10,000
T. Rowe Prime Reserve (October 30, 1987)	571
2. Listed securities (at cost)	
General Motors (100 shares)	3,397
Transamerica (200 shares)	3,824
Great Western Financial (500 shares)	2,890
Syntrex (200 shares)	2,000
Imo Delaval, Inc. (20 shares)	--
GM Hughes Electronics (5 shares)	--
GM Class E Common Stock (10 shares)	--
3. Unlisted securities (at cost)	
V. R. Walker Co. (1 share)	--
Vaughn R. Walker, Inc. (1 share)	--
4. Real estate (at approximate cost)	
St. Germain Street, San Francisco (vacant lot)	90,000
5. Autos and other personal property	
1986 BMW 325	15,000
Art, furnishings, etc.	25,000
6. Other assets	
Individual Retirement Account (September 30, 1987)	17,136
Pillsbury, Madison & Sutro Retirement Plans	
"Keogh Plan" (December 31, 1986)	146,354
401-k Plan (September 30, 1987)	74,908
"Voluntary Account"* (October 31, 1987)	129,855
"Post-'86 Voluntary Account"* (July 21, 1987)	5,616
Evans Ventures Partners (cost)	10,000

* The "Voluntary Account" and "Post-'86 Voluntary Account" are self-directed. The latter is invested entirely in T. Rowe Price Capital Appreciation Fund; as of October 31, 1987, the former was invested through an account at Shearson, Lehman Brothers as follows:

Bankamerica Corp. - 500 shares
Caterpillar, Inc. - 200 shares
Deere & Co. - 200 shares
Exxon Corp. - 400 shares
Occidental Petroleum Corp. - 400 shares
Ohio Edison Co. - 500 shares
Shearson Daily Dividend, Inc. - 58,856 shares
Lehman Management Cash Reserve - 13,324 shares

7. Notes payable to others		
Pillsbury, Madison & Sutro Retirement Plan		12,317
Loan #1 (December 31, 1986)	7,817	
Loan #2 (December 31, 1986)	4,500	
8. Accounts and bills due		
The Bank of California, N.A.		10,039

CONFIRMATION HEARING ON: PAUL V. GADOLA AND RICHARD L. VOORHEES

WEDNESDAY, JUNE 22, 1988

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 8:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick Leahy (acting chairman) presiding.

Also present: Senators Thurmond and Hatch.

Staff present: Steven J. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Melissa Balaban, nominations clerk; Robert J. Short, minority chief investigator.

Senator LEAHY. I am sorry for being late. Since we are starting at 10 minutes past 8, instead of ending at 10, we will finish at 10 minutes past 10.

This morning, the Judiciary Committee holds its 30th hearing in this Congress to consider nominations to the lower Federal courts.

Today, we will take testimony on two nominations to the district courts: Richard Voorhees for the Western District of North Carolina, and Paul Gadola for the Eastern District of Michigan.

As we customarily do, we will hear first from the distinguished ranking minority member of this committee, Senator Thurmond, and other Senators and members of the House who wish to introduce nominees to the committee.

Before we begin, let me note for the record that these nominees, like all other nominees before the committee, have completed extensive questionnaires on their qualifications, experience, and financial situation.

Publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will keep the record open for followup questions to the nominees, and for additional questions that may be submitted by members of the committee who are unable to be present this morning.

We will also include in the record the complete introductory statement of Senators and House Members.

I would yield, first, to the distinguished Senator from North—from South Carolina. I am sorry. We have got North and South Carolina here, and I apologize for that to the distinguished Senator from South Carolina.

Senator THURMOND. And Mr. Chairman, I want to commend you for setting this hearing at 8 o'clock. Everybody is fresh in the morning, and I think it would be a good policy to do that every morning until we catch up with these nominations.

I want to say that I have got to leave here at 8:20. Senator Hatch promised to be here at that time to lead the prayer group over in the Capitol this morning.

I am very honored to have Senator Riegle and Representative Kildee to come and testify on behalf of Paul Gadola, and also Senator Helms on behalf of Richard L. Voorhees.

We welcome you, gentlemen. We are honored to have you before our committee.

Now I want to say to Mr. Gadola, and I want to welcome you, congratulate you on your appointment by the President, and congratulate you on having these fine representatives, a Senator and Congressman here on your behalf.

Incidentally, your nomination has been pending before the Judiciary Committee since April 23, 1987, 14 months. I am pleased that after such a long delay, you have finally been given the opportunity to appear before the committee and respond to any concerns which may have been raised regarding your nomination.

In my opinion this is the only fair and reasonable thing to do.

I shall be glad to support you, and say to Mr. Voorhees, I would like to welcome you here today, to congratulate you upon your appointment by the President, and having Senator Helms to press your nomination.

I am pleased that you have finally been given the opportunity to appear for a hearing. It will be 1 year, next month, that your nomination has been pending before the Judiciary Committee.

I am unaware of any valid reason for such a protracted delay concerning your nomination, but maybe we will find out today why this occurred.

Again, I congratulate you and I am glad to see you both here, and I want to commend the chairman for holding the hearing on these two nominations, and I hope that he will hold more as time goes by, as was promised by Senator Biden.

Senator **Leahy**. Well, I am sorry that the distinguished Senator from South Carolina is only going to stay a few minutes. He had told me he was anxious to have these hearings, and we had set this one for his convenience this morning. I am sorry that he cannot stay with us, but I notice, Mr. Gadola, he has accepted as a matter of faith that he's going to support your nomination. He said he is going to support you before he even hears any testimony.

But in the few minutes remaining that the distinguished Senator from South Carolina will stay with us I would note that he said that your hearing is being held 14 months after your nomination. Now I know you are aware of why that is, but I think we should state the reason in the public record.

Within 3 weeks after the committee received your nomination, we had reviewed the background report compiled by the FBI, and we noted several unresolved issues.

At that time, on May 15, 1987, I wrote to the Justice Department to ask that the FBI be directed to conduct a further investigation in an attempt to resolve these issues, and that procedure is not the least bit unusual.

Senator Thurmond has done it, I have, and other committee members have. But the Justice Department's response was perplexing and served to slow down action on your nomination.

First, the Justice Department simply ignored this committee's request. We have been furnished a memo prepared by a high-ranking official in the FBI which indicates that our request was not even forwarded from the Justice Department to the FBI until October 15, 1987, 5 months after we made it. It had not even gotten out of the in-basket to the out-basket.

Then the Justice Department responded by telling the committee we already had the information we requested. We went through that response point by point and showed the Department we were right and they were wrong.

In December 1987 I once again asked them to provide the information we had requested the previous May. Finally the information began to trickle in. We received one packet in January, another in February, more in March and more in April.

All during the time we obtained these piecemeal responses we continued to press the Justice Department to finish the work we had originally asked them to do in May 1987.

These requests came from members of this committee. It came from Senator Riegle who really pushed hard for you, after I explained to him why a hearing had not yet been held on your nomination.

Back in March I wrote to Senator Thurmond and asked him to help prevail upon the Justice Department to respond to our request. The final part of their response was delivered to the committee on June 14.

Now that was 8 days ago. So 8 days after we got the final report from them, we are having the hearing. Now as I said, I just wanted you to know that we are starting the hearing 8 days after we finally got the material from the Department of Justice.

I think that is about as quick as anybody might expect.

Why do not I invite Senator Riegle and Representative Kildee——

Senator **Thurmond**. Mr. Chairman, can I make a response for a minute.

Senator **Leahy**. Oh, of course.

Senator **Thurmond**. You are blaming it on the Justice Department. Well, the Justice Department I think has done what it could, and that is no excuse. What's the excuse on Voorhees?

Senator **Leahy**. Well, we will get to Mr. Voorhees soon. I think Mr. Voorhees is glad to be here. I am sure Mr. Voorhees has no objection to having this hearing today.

I wonder, first, if Senator Riegle and Congressman Kildee, and Mr. Gadola could come forward. You can introduce him, and then I want to yield to my distinguished colleague from North Carolina for introductions.

STATEMENT OF HON. DONALD W. RIEGLE, JR., A U.S. SENATOR IN CONGRESS FROM THE STATE OF MICHIGAN

Senator **Riegle**. Thank you, Mr. Chairman, and let me indicate how appreciative I am for your consideration in conducting this hearing this morning, and for following through systematically on the nomination of Paul Gadola.

As you have cited for the record, there has been an extraordinarily long processing time involved with this nomination, and having gotten involved in it quite deeply myself, I would confirm what you have said this morning, that some of the issues and questions that the committee had—I gather on both sides of the aisle—were not able to be sufficiently responded to by the Justice Department until just a few days ago.

In fact in the course of that effort I have spoken at different times to various people in the Justice Department, including the Attorney General himself, to see if we could not get all the information and followup that was needed for the committee.

That has now happened, I gather about 8 days ago, and so I am personally appreciative, Mr. Chairman, of the fact that you have called this hearing today and that Mr. Gadola is here, and having the chance to appear, along with myself and Congressman Kildee.

I want to say some other things about this because it is unusual for a nomination to be pending for nearly a year and a half, and it is disruptive in many ways, certainly to the professional life of the person being nominated.

In numerous conversations I have had with Mr. Gadola, he has attempted to deal with that and adjust to that as best he can, and so I know he, too, is very grateful to be here today, and to have had the opportunity also to meet a few days ago with the committee staff to review any questions that they might have.

I have known Paul Gadola for many years, and I believe he's fully qualified for this position. As is the practice, I was not involved in the selection process, but I have followed it very closely since he was selected and nominated by the adminstration.

Paul was born and raised in my home town of Flint, Michigan. He is a graduate of Michigan State University and received his law degree from the University of Michigan in 1953.

He's been an active and respected member of the legal community in Genesee County for nearly 35 years now. He is here today with his wife accompanying him.

In addition to a demanding legal career, Paul has carried on his family's longstanding commitment to public service. Over the years, he has served both the City of Flint and Genesee County as the chairman of the board of trustees of the Mott Community College, the chairman of the March of Dimes for Genesee County, the vice president and director of the Genesee County Legal Aid Society, and a member of the board of directors of the Greater Flint Chapter of the NAACP.

The bar association has rated Paul Gadola as qualified to assume the duties and responsibilities of a Federal judge.

Martindale-Hubbell, a national legal directory and legal lawyer rating service rates Paul's legal performance as follows. Under the category, "Legal Ability Rating" he receives an "A" which is the highest rating, and under the general recommendation for faithful adherence to ethical standards, professional reliability and diligence, he receives the grade of "V" which is also the highest rating which can be attained.

He served in the U.S. Army from 1953 to 1955. I have found him, over the several decades that we have been personally acquainted, to be a very hard working, honest, straightforward person. A person considered in careful judgment, and a person who I think would bring those attributes to the bench.

I appreciate the fact that the hearing is occurring today, and I hope that his nomination can be reported favorably to the full Senate.

Senator LEAHY. Thank you very much, Senator Riegle. And Congressman Kildee, we are delighted to see you, too. I appreciate seeing two such good friends as Senator Riegle and Congressman Kildee, who are neighbors, and close personal friends, as well as ofttimes allies on legislation. Dale, I am glad to have you here, too.

STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you very much, Mr. Chairman.

It is a pleasure that I join this morning in the confirmation hearings for Paul V. Gadola. I have know Paul for well over 30 years. That is well over half our lives. He is a man of unquestionable integrity, intelligence, legal ability, and political moderation.

Paul is of a different political party than I am, but he shares many of the values that I have, as they pertain particularly to civil liberties. As you may know, Mr. Chairman, my home town of Flint, Michigan, was the first community in the United States to approve an open-housing ordinance, and out of the 40,310 votes cast, we won that victory by 30 votes.

And I am sure that outcome would have been quite different were it not for Paul Gadola. When the city police department and city officials attempted to ban a rally in favor of the ordinance, Paul, representing me as plaintiff, helped obtain a restraining order that allowed the rally to proceed, and I think that rally was fundamental in that victory that year.

As an American Civil Liberties Union attorney, Paul also won a court case that permitted an anti-Vietnam war rally to take place in Flint, Michigan.

He is past president of The Urban League of Greater Flint; past board member of the Flint Branch of the NAACP; and past vice president and director of the Genesee County Legal Aid Society.

He is a man of high moral character. I unreservedly and wholeheartedly recommend him for appointment to the U.S. District Court for the Eastern District of Michigan, and I would urge that you give him prompt and thoughtful consideration.

I would be most happy, if you wish, to discuss his qualifications in greater detail.

Senator LEAHY. Well, I certainly appreciate that, and what you and Senator Riegle have said carries a great deal of weight with this committee.

And also, at this point, Mr. Gadola, it was mentioned that your wife was here. Do you have members of your family or friends here that you would just like to introduce? So it could be on the record that they are here, too.

I know it is a special occasion for them also.

Mr. GADOLA. I do have my wife, Falding, with me. She is right here in the front row.

Senator LEAHY. Mrs. Gadola, good to see you. Was there somebody else, too?

Mr. GADOLA. No. I said I had my wife, Falding, with me. She is here, in the front row.

Senator LEAHY. Yes. I did see her, and I appreciate her being here, and I know it is a special occasion for you, and I thank you very much. I wonder if you could step down just for a moment, Mr. Gadola.

Mr. GADOLA. Certainly.

Senator LEAHY. I know that both Senator Riegle and Mr. Kildee have committee meetings. I realize that they may not be able to stay, but I appreciate your coming here so early.

And Senator Helms, I am delighted to see you here, sir, and if you would bring Mr. Voorhees forward and introduce him to us.

STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Senator HELMS. Mr. Chairman, I thank you very much for inviting me to the Pat Leahy Breakfast Club. I would say to my friend, Dick Voorhees, about my relationship with Senator Leahy: He is the chairman of the Agriculture Committee, which I previously chaired. I think the distinguished chairman will agree that being chairman of the Agriculture Committee is something like having a root canal.

Senator LEAHY. It was described by one of our colleague the other day at a meeting. The distinguished Senator from Arkansas serves on that committee. He said being on the Agriculture Committee, because of the schedule we have been keeping, is like being on the death march from Bataan with Pat Leahy with the platoon leader.

I was not quite sure just how to take it. I might say, also, Mr. Voorhees, about the breakfast club meeting: the reason we are having this hearing this early is that it was originally scheduled for next week, and then there was a possibility we might not be in session next week.

And I had explained to Senator Helms the risk that we might have to put off your hearing for another couple of weeks because of that. I suggested that, rather than risk that, if he had no objection, we would move it to this date. But we would have to move it early in the morning because we all had committee assignments starting at 10:00. That is why we are here now. Senator Helms is an early riser anyway, so that did not create any problem for him.

Mr. VOORHEES. I appreciate it very much.

Senator HELMS. Mr. Chairman, in all seriousness, I am sincerely grateful to you, and Senator Hatch, Senator Thurmond, and the other members of the committee, for scheduling this hearing this morning.

If it had been at 3 a.m., I would have gladly been here.

Senator LEAHY. You might have been.

Senator HELMS. Well, sort of gladly. [Laughter.]

But seriously, we have an excellent nominee for a judgeship in the Western District of North Carolina, Richard L. Voorhees. I might add that Dick has his charming wife, Barbara, here; his two children, Martha and Coerte; his brother, Bob, and Chris, his sister-in-law. I am sorry that Senator Thurmond left, because Senator Thurmond is married to Nancy Moore. This young lady over here, who came up from Gastonia, is also Nancy Moore.

Senator **Leahy**. A different Nancy Moore.

Senator **Helms**. It is a different Nancy Moore. But thank you, Mr. Chairman, very much. The seat in the Western District of North Carolina has been vacant since September of last year when Judge Dave Sentelle was elevated to the U.S. Circuit Court of Appeals for the District of Columbia. The length of the vacancy has placed a severe strain on the other two judges in the western district.

I might mention, just for example, that the western district has an average of 95 felony criminal filings per authorized judgeship per year.

This is the seventh heaviest criminal caseload of the 94 judicial districts in the country. The chief judge there handles almost all of the criminal cases, and has had to borrow judges from other districts to work on the caseload.

Now, as to Dick Voorhees, he grew up in Winston-Salem, North Carolina, where he attended public schools. He was graduated from Davidson College in 1963 with a BA in French. He earned his law degree at the University of North Carolina, Chapel Hill, in 1968.

After graduation, Mr. Voorhees was commissioned in the U.S. Army, and served in Korea and at Fort Bragg. He was released from active duty in 1965, and honorably discharged from the reserves in 1969.

Since his admission to the North Carolina bar in 1968, he has practiced law and lived in Gastonia. I might add, that in consideration of recommending Mr. Voorhees to the President, I checked with Democrats and Republicans, and people in all walks of life. In all candor, I have never—never been able to recommend a nominee with more accolades from people, across the board.

He is a highly respected lawyer and citizen. He's been very much involved in community work, and he's a fine and decent young man.

I am going to summarize the rest of my statement, Mr. Chairman, because I know that your time is limited. Let me mention that the North Carolina Bar Association polled its 7,500 members with respect to what the members think of Dick Voorhees.

Bear in mind that most North Carolinians are not of the same political party affiliation that I am. James Moore, president of the North Carolina Bar Association reported: "It gives me great pleasure to advise you that of those members of the North Carolina Bar Association who felt qualified to rate the credentials of Mr. Voorhees, the vast majority of them responded with a solid 'very qualified' rating."

The Gaston County Bar has overwhelmingly, unanimously endorsed Mr. Voorhees, who served as president of that bar from 1982 to 1984.

Mr. Chairman, Dick may be the only nominee to the Federal bench to have the endorsement of four U.S. Senators from his home State. Prior to his death, the late John East and I discussed a likely successor to the seat that would be vacated if Judge Sentelle were in fact nominated for the court of appeals, which of course he was.

It was Senator East's wish that Dick Voorhees be recommended to the President, if and when Dave Sentelle's seat became available.

After John's death, Jim Broyhill was appointed, and he, too, expressed strong support for Dick Voorhees.

Now Senator Sanford and I join in supporting the nomination. Obviously I think highly of this man, and I say very sincerely, again, Mr. Chairman, I do appreciate your moving along with it and I thank Senator Hatch and Senator Thurmond, and the other members of the committee.

Senator **Leahy**. Thank you very much, and I do appreciate that. Mr. Voorhees, we joked a little bit about the hour. I come to work very early and, usually, as I am driving in, I notice the distinguished senior Senator from North Carolina's car was already here. We keep those kind of farmer's hours. So this has worked out well for us.

Senator Helms had mentioned your family and friends are here. Would you just introduce them, sir, so they can be a part of the transcript.

Mr. **Voorhees**. This is my wife, Barbara Voorhees.

Senator **Leahy**. How do you do, Mrs. Voorhees

Mr. **Voorhees**. My daughter, Martha Voorhees. My son, Coerte Voorhees. My brother, Bob Voorhees, and his wife, Chris. My sister-in-law Jean Duck, and her husband, Rabon Duck. My good friend, Fries Shaffner. And Harry Day, who is also from Winston-Salem, originally. I think that is the group.

Senator **Leahy**. You are all up here to escape the hot weather in North Carolina and——[Laughter.]

I am delighted to have you all here. It is a nice thing, obviously, for the nominee to have so many friends here, and I wanted him to mention each one of you just as I wanted Mr. Gadola to mention his wife, because a transcript is kept of this, and it does become part of the history of the Senate. That transcript is a small part of the history, but your names should be mentioned in there and will be there.

I thank you very much, and I know, Senator Helms, you also have a stack of committee meetings. I appreciate you being here and thank you very much for coming.

Senator **Helms**. Thank you, Mr. Chairman. Senator Hatch.

Senator **Leahy**. Now Mr. Gadola, if you could come back, sir, and raise your right hand.

Do you solemnly swear that the testimony you shall give shall be the truth, the whole truth, and nothing but the truth?

Mr. **Gadola**. I do.

Senator **Leahy**. And Mr. Voorhees, do you solemnly swear that the testimony you shall give shall be the truth, the whole truth, and nothing but the truth?

Mr. **Voorhees**. I do.

Senator **Leahy**. Mr. Gadola, if you would come up first, then, please.

Did you have an opening statement you wish to make, Mr. Gadola?

TESTIMONY OF PAUL V. GADOLA, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Mr. **Gadola**. Well, just very briefly, Mr. Chairman. Senator Hatch. I wanted to say that the day that I was nominated by the President of the United States to the U.S. District Court for the Eastern District of Michigan was the proudest day of my professional life, having spent some 32 years in the practice of law, and having devoted my entire professional life to the practice of law.

Today, I consider it an equal honor to have the privilege and the opportunity to appear before this committee in this confirmation hearing.

I am delighted to be here, I am honored to be here, and I do consider it a rare privilege. There have been some comments about delay, and certainly, it has been a long time, but I am not assessing any blame. I am just glad to be here and I am ready and prepared to answer any and all questions you may wish to put to me, and stay just as long as it may require to respond to any concerns or any inquiries you wish to make.

Thank you very much.

Senator **Leahy**. Thank you very much.

I note, in going back over your records, Mr. Gadola, that you have had a good deal of litigation experience in over 33 years as a lawyer. Now most of it appears to have been in civil, non-jury matters in State courts. Am I correct in that?

Mr. **Gadola**. I would say that the majority of the cases I have tried have been bench trials. That is correct.

Senator **Leahy**. Is that a pretty common thing in Michigan, to try cases as bench trials rather than jury trials?

Mr. **Gadola**. Jury trials are really the exception, unless you are in the field of, practice of criminal law, in which case the great majority of the cases are tried to a jury. But in the civil area, typically, the bench trials predominate.

Senator **Leahy**. And what about Federal litigation? Have you had much Federal court litigation?

Mr. **Gadola**. Most of my experience has been in the State court, the State circuit court, which is the highest court of general trial jurisdiction in the State of Michigan.

However, the rules, the Michigan court rules, are patterned after the Federal Rules of Civil Procedure, and are almost identical thereto, so there is not a great deal of difference as far as the form of practice, the procedure of practice is concerned.

Senator **Leahy**. And of course some of the cases are there because they have a great deal of Federal law. I was looking back through the docket of the court to which you have been nominated, and these are just some ballpark figures, but it appears that about one-quarter of its civil docket consists of labor, civil rights, and intellectual property cases.

Now those are cases which are, rarely, if ever, brought in State court, so you would not have had opportunity to deal with that in your practice.

What steps would you take to familiarize yourself in those particular areas?

Mr. **Gadola**. Well, the same steps that I have taken whenever my practice took me into a new area of the law, and that is study, and work long hours in the library. I have been noted for that I think throughout my professional career, and I am certainly prepared to do that.

I would work hard to become a proficient legal scholar in the areas of practice with which I am not particularly familiar.

Senator **Leahy**. Senator Riegle and Congressman Kildee mentioned this morning in introducing you—and they had mentioned to me earlier—your active participation in community and civic affairs. It is rather extensive.

The record I have here shows participation in a wide range of civic organizations. They range from the NAACP and The Urban League, to educational institutions like Mott Community College, and an organization called The Old Newsboys.

I could probably join that, having had two teenage sons with paper routes. I have done a little bit of that myself. I recall, back here—if I could digress just a moment, Senator Hatch—about 3 or 4 years ago, on a very rainy day, about 5:30, 6:30 in the morning, as I was helping my son, Mark, deliver newspapers out in McLean, Virginia. I go trudging up carrying this paper, drenching wet. A door opens. Somebody had moved into the area. And I jokingly said: "I am sorry I am a couple minutes late but I am not the regular newsboy." He said: "Well, then I hope we get the regular newsboy back," snatches the paper out of my hand, and goes on back in the house. [Laughter.]

All right. Two days later, this same person, who had just been appointed Assistant Secretary or something had to appear before one of my committees. He arrives a few minutes late, walks in, sits down, looks up at me, and all of a sudden does this double take as a look of horror comes over his face. He recognizes his paperboy. [Laughter.]

I did not say anything. So those are the Old Newsboys. What is the Old Newsboys, now that I have gone that far around?

Mr. **Gadola**. The Old Newsboys, originally, was an organization that was composed of men who had been newspaper delivery boys, carrier boys in their youth, and it's an organization that basically gives financial assistance to kids who are from families that do not have sufficient financial resources to provide clothing and Christmas, and so forth.

And the idea is that the basic slogan of the organization is no child without a Christmas, but the organization has branched out into other areas as well as the Christmas, and it is a year-around, now, operation, to provide help to children who are from families that are poverty stricken.

The nice thing about the organization and why it is really my very favorite charity, is that of all of the money collected in this organization, every single dime goes to the kids and to the families. The members' dues totally take care of the overhead—that is, the staff and the building, and what we raise in the annual drive to sell newspapers on the street corners at Christmas-time and that sort of thing—all that money goes to the charity.

We have so many charities, a large proportion of the income goes to administration.

Senator **Leahy**. That must give you a great deal of satisfaction.

Mr. **Gadola**. It does. Yes, it does.

Senator **Leahy**. It is a fascinating idea.

Mr. **Gadola**. My dad was one of the founders of the organization many, many years ago, and I have been very active in it, and I do their legal work as well as being on the board and being an active member, and I enjoy it terrifically. I would say it is my very favorite charity.

Senator **Leahy**. In fact your father had the same name, too, did he not?

Mr. **Gadola**. That is correct.

Senator **Leahy**. Let me go into some questions. You understand that we are going to have to go through these. Some of these are questions that we asked the Justice Department to look into, and their responses were delayed. So we want to have your answers for the record.

When you filled out your form for the Justice Department at the beginning of this process, you were asked to identify your current spouse and any former spouses.

You listed Mrs. Gadola, and wives from two previous marriages which ended in divorce. You did not mention an annulment. Is there a particular reason why?

Mr. **Gadola**. Well, as I recall, the way the question was posed, it asked—it specifically requested a response to the question of whether I had been divorced, and, if so, the name of a former spouse.

And I answered that. There was an annulled marriage, but under Michigan law, an annulled marriage is absolutely void from its very inception. It is not a marriage at all. I might say, however, that in responding to other forms here, I have submitted questionnaires both to the American Bar Association and to the Department of Justice—very lengthy forms—and in both of those they asked whether I had been involved in any litigation, and in those situations I listed the annulment. So it was made—there was no attempt to conceal that situation.

It was just that I was trying to respond as specifically as I could to the exact precise question that was asked, and the question, as I recall it, requested information as to any divorce or any former spouse.

And under Michigan law, at least, if there is an annulment, that individual is not a former spouse because the marriage is deemed void from its very inception, as if it never existed.

Senator **Leahy**. There is a question on Standard Form 86. That is the basic document each nominee fills out for the FBI investigation. And the question is: "Have you ever been the subject of a complaint in any court, administrative agency, professional association, disciplinary committee, or other professional group?" And you answered no.

Now I understand that on at least nine occasions in the past 20 years, clients or former clients of yours have complained to the Michigan Attorney Grievance Commission about your handling of their cases.

Now I should note, the record should be very clear on this, that in each case you responded; the Grievance Commission determined that no action was warranted; and the file was closed.

But the complaints were there. Is this a very technical reading of the question or why did you just answer no on it?

Mr. **GADOLA**. I can—yeah, I believe I can explain that adequately. The question—the question, as I recall—and I cannot recall the exact wording—asked whether any complaint had been made.

Now, under the, under the provisions of the Michigan court rules, which are issued by the Michigan Supreme Court and govern the proceedings of the State bar—because we have an integrated bar—the procedure is this.

If a client sends a letter to the grievance administrator in Lansing, that is considered a request for investigation. When that is received, then an inquiry is made, and then, if there is considered to be any merit there, or anything at all, that would create any sort of a prima facie case, even, of any, perhaps unethical conduct, then the State grievance administrator authorizes the filing of a complaint.

In each one of these cases, after the preliminary inquiry was made, the State grievance administrator dismissed the matter, found that there was no cause for the filing of a complaint.

This procedure is designed to screen out what you might consider—what I might call crank letters, for instance. Now I practice—I represent individuals, people, basically, and not basically corporations or trust departments—that sort of thing.

I deal with people, day in and day out. If, over the course of 33 years of law practice, you do not get 9 or 10 or 20 or 30 letters to the grievance administrator from a client who is unhappy about something, then I would consider that highly unusual.

But in each and every one of these matters, the State Bar considered that there was nothing there to even investigate further, and did not authorize the filing of a complaint.

I might further say that basically they were from people who thought the fee was too high, and they were not—I do not believe there was any one where it was even alleged that I was guilty of any sort of ethical impropriety, or any violation of the canons of ethics, or of any lack of diligence to the cases.

One lady I think described my services as being an artistic success, but she was unhappy because the people fled the jurisdiction and we could not collect the $100,000 plus judgment. And it was that sort of thing.

Senator **LEAHY**. Some of them, though, also raised questions about temperament, did they not? I mean, there was one——

Mr. **GADOLA**. There was one lady—I am sorry, Mr. Chairman.

Senator **LEAHY**. Go ahead.

Mr. **GADOLA**. There was one lady, I think, that indicated that I was rude in the office, and I think in my response I indicated that I was indignant—whether you would classify it as rude, or not—but she had said that her—I think it was her ex-husband had indicated that I would probably sell her out, or something to that effect, in a personal injury case, and therefore she was going to take her file out of my office, and I guess I was rather indignant with her, and I think probably with justification.

I take pride in my record as an attorney, and I certainly told her, in no uncertain terms, that I resented such an implication, that I would ever do anything that was inimical or detrimental to the interests of my client.

But her basic complaint was that I said I was charging her no fee but I would expect her to reimburse the costs that I had expended in investigating her case. It was not very much. Then she claimed that I demanded that she pay the $108 in costs that I had incurred, and that was her primary objection. But she said I was rude. I agree. That was her complaint.

Senator LEAHY. There was one where they said, "Mr. Gadola could never be reached by phone. When he was, which was on two occasions, all he could was cuss me, ask me who I thought I was." Another request for investigation: "He said, quote: 'Now get out, you illiterate, ignorant people, get out of my office.' He looked so violent I began to shake all over."

I emphasize, once again, the Grievance Commission found no improper conduct on your part in either of these cases.

But one of the issues we look for—and I am sorry that Senator Thurmond could not stay with us today, because he has rather eloquently, and very frequently, referred in these judicial nomination hearings to the need for a Federal judge to show patience and courtesy to lawyers and litigants, jurors, witnesses and the public.

You have such an enormous amount of power as a Federal judge, nobody really has more, that I would like to emphasize the question. I know that Senator Thurmond would if he were here. I think Senator Thurmond has done enormous service to the Senate and to the bench by always asking it. That is the question of judicial temperament.

Some say you are short-tempered, you have a short fuse, and so on. And others interviewed say you have a good temperament to be a judge.

Now I will give you a chance to give a self-serving answer, if you would like.

Mr. GADOLA. All right.

Senator LEAHY. What kind of a temperament would you have as a Federal judge?

Mr. GADOLA. I think—well, first of all, I do not think I have a short temper or a short fuse, but I suppose that there might be instances where someone might form a different impression.

But, frankly, I think I am very slow to anger. I think I am a very patient, very placid sort of a personality, quite frankly.

You know, I have practiced before judges who are tyrannical, quite frankly, and I think I have a full grasp of the importance of a judge being patient and compassionate, and not forgetting, for one moment, that the people before him, with their problems, cannot always be judged 100 percent one way or the other. That there are nuances and shadings, and so forth.

I really find it hard to understand why anybody would think that I was short-tempered, or that I lack the temperament to be a judge.

I just—frankly, Mr. Chairman, I feel that I probably have one of the more calm and placid dispositions of the members of our local bar, at least, and I think I have exhibited that over the years as chairman of the board at our community college, where there have been some real disputes, but the board keeps electing me, term after term, as chairman, unanimously, even though a good many of the members are not of my political party.

Because they have indicated to me that it is because of my calm demeanor, and the placid, evenhanded way in which I run a meeting. I guess that is the self-serving explanation I would make. But certainly, I do know the importance of having a good judicial temperament.

I have dealt with judges that did not have it, and it is a shame, because it is a shame—it is a shame primarily, not because the lawyer who perhaps is treated badly, but if the lawyer is treated badly, ultimately, it is the client that is treated badly, and that is a shame.

Senator LEAHY. Do you ever get loud and boisterous in public?

Mr. GADOLA. At football games. I am a great football fan, especially of Michigan State University, and anyone who has ever seen me at a football game would probably think I was a little crazy, but I do get very enthusiastic at football games, and maybe to a lesser extent at basketball games.

But otherwise, I would say not.

Senator LEAHY. Not other places?

Mr. GADOLA. No, sir.

Senator LEAHY. One of the issues that has arisen in this nomination is your connection with a restaurant in your hometown of Flint, Michigan called the Shorthorn Steak House. The establishment had a brief moment in the spotlight when it was identified as a place where Denny McLain, a pitching ace for the Detroit Tigers—I do not know if you are a Tigers fan, Senator Hatch—got ensnarled in illegal bookmaking activities. There are indications in the file, that at least in the past, the restaurant was a gathering place for people engaged in illegal gambling activities, especially illegal sports betting.

I believe the restaurant has been in existence since about 1962. Tell me your connection with it both as a lawyer and as a patron of the restaurant.

Mr. GADOLA. All right. Back in 1962 I was retained by a gentleman by the name of Donald Fogell, who was a local pharmacist in Flint, Michigan, and he and another individual by the name of Don Wyant were going to open a restaurant business, or purchase a going restaurant business, and I handled the legal matter of organizing the corporation, which was called the Shorthorn Steak House, Incorporated, and the restaurant was incorporated, it was purchased, it went into operation.

And since there were two stockholders—Mr. Wyant and Mr. Fogell—each of whom held an equal number of shares of stock in the corporation, each of their attorneys were added to the board, it being Michigan law—back at that time you had to have at least three people on the board of directors of a corporation.

So Mr. Wyant's lawyer was Norman Gottlieb, and the four of us then were the board of directors. A few years—a couple years later, Mr. Gottlieb dropped off the board because by that time I was well acquainted with both Mr. Wyant and Mr. Fogell, and they both had confidence in me, apparently, and they felt that it was not necessary to have two lawyers.

And therefore, I continued to act as legal counsel for that restaurant and served on its board of directors, and two years I think I was secretary of the corporation, which merely meant that I signed the minutes of meetings, until that business was sold in 1979.

The business was, and is, even today, under new ownership, a gathering place for many, many professional people in Flint. It is one of the better restaurants in the Flint area, and basically, other than this one incident which was mentioned originally I think in Sports Illustrated magazine, the restaurant has had an unsullied reputation.

I have been a frequent patron. I consider Don Wyant, the owner, quite frankly, to be a dear personal friend, and an honest, upright citizen. I said when this came out, originally, that Denny McLain had been—well, let me preface that. Denny McLain, in about 1965, right in that period of time, before he was the big star pitcher of the Detroit Tigers—but he was pitching for them—used to perform as an entertainer in the off-season.

That was before the days of million dollar ballplayer salaries, and so they used to have jobs in the off-season, and he played the organ and did this at various clubs and restaurants, and places—lounges around the Michigan area.

And the Shorthorn Steak House hired him for an engagement, and he was there for a couple of weeks, I think. It was not a long engagement.

But during that time, apparently, he and the manager of that restaurant, a gentleman who is now deceased, got into some activity involving bookmaking, betting on sports events.

That came out in the press several years later, after McLain was a famous national figure, it came out that several years previously he had been engaged in this betting situation, part of which took place while he was playing the organ at the Shorthorn Steak House.

The baseball commissioner I think suspended him for half a season, and after that, his career went steadily downward, and ultimately, of course we all know, he ended up in Federal prison on other unrelated charges in the State of Florida.

But my situation, as far as I was concerned, I was the attorney for the restaurant, I served on its board of directors, and I am a close personal friend of the owner, of the then-owner of the restaurant, but certainly I had no knowledge, at any time, that Mr. McLain had been involved in any such activity, and it did not come out until several years after he had left the restaurant's employ.

Senator **Leahy**. That was after Denny——

Mr. **Gadola**. When the—I think it was about 1965, or in that period, 1965–1966, that he played in the restaurant. It was after he—it was about 1969 or 1970, I think, up in that era, that this came to light in Sports Illustrated, that he had been involved in some sports betting operations, part of which apparently took place in Flint while he was playing at the Shorthorn Restaurant.

Senator Leahy. Now of course there are two Shorthorns. There is a Flint Shorthorn and a Lapeer Shorthorn.

Mr. Gadola. Correct.

Senator Leahy. Legally separate, but you had an interest in Lapeer, also, did you not?

Mr. Gadola. That is the only one I had an interest in, a financial interest, yes. Some time after the Flint Shorthorn Restaurant was formed. and which I prepared the incorporation papers, and acted as attorney, then these same two gentlemen—Mr. Fogell and Mr. Wyant—had an opportunity to purchase a business in Lapeer, Michigan, which is a town maybe 20 miles, 25 miles from Flint.

And in that particular transaction, myself and another individual by the name of Les Kelly were stockholders. We all invested in that business in Lapeer.

That business was called WKGF Enterprises. That is the name of the corporation. But it was also—it was the Shorthorn Hotel, was the assumed name that was used. They are two separate businesses, and in that business I was an investor, and I think some confusion arose because I was constantly questioned as to whether I owned part of the Shorthorn Steak House in Flint, and I never have.

Senator Leahy. Let me ask you about Clyde Roberts. He was a manager of the Shorthorn Restaurant in Flint for a number of years, is that correct?

Mr. Gadola. Yes, he was. Yes.

Senator Leahy. He managed the Lapeer Shorthorn for a while?

Mr. Gadola. For a time, and I think his brother was manager for a time also.

Senator Leahy. And he died in 1985?

Mr. Gadola. I think that is probably correct.

Senator Leahy. Now did you know that Clyde Roberts was involved in sports betting?

Mr. Gadola. I knew this: That when you would talk to Clyde Roberts he would constantly talk about that he had won some money betting on a football game or whatever. I remember—and as I told the committee staff last week—that many times, when I would speak to Clyde, when I would come into the restaurant, he would say, well, your team, your Michigan State Spartans did really well last Saturday, and I said well, they did not do very well at all, they lost the game. He said yeah, but they beat the spread, they beat the spread. And I said, well, I do not care about——

Senator Leahy. The spread.

Mr. Gadola. The point spread on the game. I said, well, I do not care about that, I am a sports fan, I do not bet on anything and——

Senator Leahy. Did you ever place a bet with Clyde Roberts?

Mr. Gadola. I have never placed a bet on anything in my whole life, except one year I went to the Kentucky Derby and I placed a bet on the derby, but that is the only bet I have ever placed on anything in my whole life. I do not gamble in any form, even on cards or whatever.

Senator Leahy. Denny McLain laid it out in his book, that Clyde Roberts was pretty actively involved in a deal with McLain—or a deal between McLain, Roberts and betting. Is that——

Mr. **Gadola**. I am not familiar with the book. I have never seen it, never read it.

Senator **Leahy**. Have you ever heard about that, eventually, that Clyde Roberts and Denny McLain were involved in gambling activities?

Mr. **Gadola**. Well, certainly, certainly Sports Illustrated said so, and——

Senator **Leahy**. Well, what I am leading up to, Mr. Gadola, did you know anything about that prior to the public statement in Sports Illustrated?

Mr. **Gadola**. No. I had no idea that that was going on when McLean was playing the organ there, and, as I say, it did not come out in the paper until years later, and I had no knowledge whatsoever.

Senator **Leahy**. When it came out, what did you do? When it came out, did you make statements to the press?

Mr. **Gadola**. Yeah. Don Wyant, who was the owner, was of course terribly distressed because the reputation of the restaurant was excellent. You had judges, lawyers, doctors, professional people were basically its clientele, and this was devastatingly bad publicity for him.

We went to the local television station and on the 11:00 o'clock news they did a live segment, the evening that the Sports Illustrated article came out, in which I said that Don Wyant I had known for many, many years, and that I was absolutely convinced that he was an honest and upright citizen.

And I might say that Don Wyant is as little involved in gambling as I am. He never has been and I am sure never will be. He is not that—anybody that knows Don Wyant knows that he's one of the straightest guys in the whole word.

And that was the only thing I participated in with the press, was, really, I went to the station to protect Mr. Wyant's reputation, as his lawyer.

Senator **Leahy**. Now you have explained the connection between Lapeer and the Flint Shorthorn. Have you ever told anyone that you were one of the owners of the Flint Shorthorn?

Mr. **Gadola**. No. No, sir. No, Mr. Chairman, I never have. I never have had any ownership interest, but I did have a one-quarter ownership of the Lapeer restaurant.

Senator **Leahy**. Lapeer. Now I understand that some of the material in the FBI reports concerns a period of time not long ago during which you went to the Shorthorn—and I guess that would be the Flint Shorthorn—virtually every night. Did you stay on many of these occasions until closing time, eating and drinking, and so forth? Is that correct?

Mr. **Gadola**. I do not think there was any, ever any period that I went there almost on a daily basis. There were times, years ago, I used to go there more frequently than I do now.

Obviously, Mr. Wyant has been out of the business for a number of years, and I do not have the personal friendship relationship with the present owner that I did with Mr. Wyant.

Senator **Leahy**. Well, I am talking about in the mid-1980's, that you were there—the report I have is "most evenings, until around closing time." But that is not accurate?

Mr. **Gadola**. I do not—no, that is not accurate.

Senator **Leahy**. Would you say the Shorthorn is the place you go to the most, if you go to a restaurant?

Mr. **Gadola**. There is two restaurants in Flint that my wife and I patronize probably on an equal basis. There is one called Mr. Gibby's, and the other is the Shorthorn, and those really are our two favorite restaurants.

And we, I would say we go to the Shorthorn for dinner, on the average, probably—some weeks once a week, other times once every 2 weeks.

Senator **Leahy**. Do you just run up a tab? How do you pay at the Shorthorn?

Mr. **Gadola**. On a tab.

Senator **Leahy**. Do you take that off against your legal fees, or what?

Mr. **Gadola**. Well, basically if the owner—I wait for his bill and I bill him for legal services, and he bills me for the meals at the Shorthorn. As I say, we go there on a somewhat infrequent basis at this time. As I say, when Don Wyant was there we were great buddies, and I used to go there much more frequently.

Senator **Leahy**. In one of the interviews with you, referring to a time in the early 1980s, and let me just read from this interview with you. It says:

> This discussion concerned Mr. Gadola's behavior patterns while in a separated marital status, including his working late at night in his office. He described himself as a workaholic, and said that while working late he would often call the Shorthorn and order dinner. He explained he knew the kitchen at the restaurant closed at midnight, so he would call from his office about 11:50 p.m., requested dinner be prepared, that he'd be there in about 20 minutes. Upon arriving his dinner would be ready and he'd join management for drinks and dinner, staying close to or until closing.
>
> He advised he did this on a very regular basis, often nightly, and in response to a question said he did not pay for his drinks and meals all the time.
>
> Mr. Gadola was then asked why he'd earlier in the interview said he did not frequent any bar or nightspot until late at night or early morning, and now was saying he did in fact so frequent the Shorthorn, and he responded that he'd guessed he'd forgotten.

Is that accurate?

Mr. **Gadola**. I did not hear the last, the last part of it.

Senator **Leahy**. I am sorry.

> Mr. Gadola was then asked why he had earlier in the interview, said he did not frequent any bar or nightspot until late at night or early morning, and now was saying he did in fact so frequent the Shorthorn, and he responded that he'd guessed he'd forgotten.

Mr. **Gadola**. I cannot remember saying that I forgot, but no, I used—that is correct, that back some years ago——

Senator **Leahy**. But the gist of the statement as to going there late at night, staying, et cetera, ordering the meals, nearly nightly—that is accurate?

Mr. **Gadola**. I do not know. It was not even remotely nearly nightly, but I do recall—I do recall many occasions, and I was—I did work until late, late hours of the night, and at my office. I used to—and I used to have that reputation of working until, often until midnight, or beyond.

And sometimes, if I had not had dinner, it often was my custom to call and say could you prepare this and that, or a sandwich, or whatever, and I will be by on my way home, and I would get a bite to eat there on my way home. So obviously I would be there at that time, that would be a late hour, and that was not infrequent, that that would occur.

But to say that it was almost on a nightly basis would be quite an exaggeration.

Senator **Leahy**. Senator Hatch.

Senator **Hatch**. Well, I want to welcome you to the committee, Mr. Gadola.

Mr. **Gadola**. Thank you, Senator.

Senator **Hatch**. And commend you for your willingness to leave your, I think lucrative private practice, to serve on the bench. It is not an easy job. It is not easy to come through these processes, but it is important that we have people like you who are willing to give this type of time.

I just hasten to point out with regard to your annulled marriage, you did mention that to the Department of Justice and to the American Bar Association, and I think that needs to be pointed out.

And with regard to the complaints against you in the State of Michigan, it is important to point out that the State Bar did not authorize the filing of a single complaint against you in any of those particular objections that occurred.

With regard to the Shorthorn Steak House, the record shows that you did nothing improper in any of your dealings with the establishment of that restaurant. You do not gamble in any form, you knew nothing about gambling at the time, and I think it is important that you understand that Senator Leahy has to ask these questions.

We are concerned about the quality of our Federal courts, but from what I see, I think you have a lot of support, not only both Senators from your State, Congressman Kildee, and others, but from the bar itself, and I think that it looks to me like you will make a wonderful judge.

So I wish you the best, I hope we can get you through quickly, and get you on the bench where you can do a good job, with your vast experience, knowing how to treat attorneys, and others as well.

Mr. **Gadola**. Thank you very much, Senator, for those kind words.

Senator **Hatch**. Well, thank you. We are glad to welcome you, Mrs. Gadola, and have you with us as well.

Thank you, Senator Leahy.

Senator **Leahy**. Thank you very much, Senator Hatch.

As you can imagine, we may have written questions for you, Mr. Gadola, and we will try to get this transcript to you as quickly as possible.

I should hasten to add something I say to every nominee, and if I forget to tell them on the record I tell them afterwards. When you get the transcript, look it over. If there is a question that, the way I asked it, or another Senator asked it, if you realize when you read your answer that you misunderstood the question, or if you want to add to your answer, please do so.

These hearings are not done in a way to play games or try to trap anybody. If you spot something in there which triggers something else in your mind that you think we should know, please feel free to add that.

As I also tell everybody, if on dates or times, or anything else, there is any inaccuracy, feel free to correct that. If there are additional questions we will get through that and we will try to get all that material to you as rapidly as we can, and ask you to get it back to us as quickly as you can. I appreciate your being here.

Mr. GADOLA. Thank you, Mr. Chairman. As I stated at the outset, I consider it a high honor and a privilege to have the opportunity to be here before the committee.

Senator LEAHY. Well, I am glad we have had this hearing because now I can walk on the Senate floor without Senator Riegle wrestling me to the ground, asking when is the hearing going to be. Mrs. Gadola, glad to have you here, too, ma'am.

Mr. GADOLA. Thank you very much.

[The following material received from the nominee and others subsequent to the hearing was included in the record:]

Paul V. Gadola
ATTORNEY AT LAW
SUITE 1410 MOTT FOUNDATION BUILDING
FLINT, MICHIGAN 48502
BOARD CERTIFIED
CIVIL TRIAL SPECIALIST

TELEPHONE
(313) 232-9133

July 19, 1988

Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
Room SD-224
Dirksen Senate Office Building
Washington, D.C. 20510

ATTN: Steven J. Metalitz
Chief Nominations Counsel

Dear Senator Leahy:

I have herewith enclosed my answers to the Public Written Questions and Confidential Written Questions concerning my nomination to be United States District Judge for the Eastern District of Michigan, which questions you forwarded to me on July 12, 1988.

My answers, in each case, are accompanied by my attestation of their accuracy.

I have also reviewed the copy of the transcript of my testimony at the Judiciary Committee hearing of June 22, 1988, which was forwarded to me by yourself on July 5, 1988. I find the transcript to accurately reflect my testimony, as I remember it, and I have therefore not edited the same for any typographical errors or other corrections.

I believe that the copies of minutes of the Shorthorn Steak House, Inc., which I have enclosed herewith, do set forth accurately and with particularity the offices which I held many years ago in that corporation. It is of course more than a little difficult to recall, with precision, more than twenty years later, the exact dates of events, but I am confident that the minutes are accurate, since they were prepared in my office at or very near to the dates of the events related therein.

I will, of course, be pleased to continue to cooperate fully with the Judiciary Committee in the consideration of my nomination.

Sincerely,

Paul V. Gadola

Paul V. Gadola

PVG:sd
Enclosure
cc: Honorable Donald W. Riegle, Jr.

(Mr. Gadola's Answers are
Attached Hereto)

PUBLIC WRITTEN QUESTIONS FOR PAUL GADOLA

1. There are at least three discrepancies between the information you have provided the Committee concerning your association with Shorthorn Steak House, Inc., and the annual reports filed by this corporation with the Michigan Department of Commerce. These discrepancies include:

(a) The annual report for 1967 lists you as the secretary of the corporation.

(b) The annual reports for 1968 and 1969 list you as vice-president of the corporation, although this entry is marked through on the copies of the reports obtained by the Committee.

(c) The annual reports for 1967 and 1968 indicate a long-term indebtedness of the corporation to you in the amount of $5000.

In each of these instances, you have told Committee staff that the information reflected in the corporation's annual reports is incorrect. Please explain the basis for this statement, and state why, in your view, these discrepancies exist. Please include in your answer a description of how these annual reports were prepared, and describe your role, as counsel to and a director of the corporation, in their preparation and review.

2. In 1970 it was publicly reported that Denny McLain had become involved in illegal bookmaking activities through Clyde Roberts, manager of the Flint Shorthorn and former manager of the Lapeer Shorthorn. Commissioner Bowie Kuhn, in suspending McLain from major league baseball, made a similar finding.

After the allegations of Roberts' involvement in this matter became public, what did the owners of the Flint Shorthorn do with respect to Roberts' continued employment as the restaurant's manager? For example, did the owners interview Roberts confront Roberts with these allegations, or did they condition his continued employment on his refraining from gambling activities? What role if any did you play in any action taken by the owners of the Shorthorn with respect to Roberts?

ANSWERS OF PAUL V. GADOLA TO PUBLIC WRITTEN QUESTIONS SUBMITTED TO HIM BY SENATOR PATRICK LEAHY ON BEHALF OF THE COMMITTEE ON THE JUDICIARY OF THE UNITED STATES SENATE

1. You have indicated that there are three discrepancies between the information which I have provided to the Committee concerning my association with Shorthorn Steak House, Inc. and certain information contained in the annual reports filed by that corporation with the Michigan Department of Commerce, and I will respond to those inquiries in the same order as they were presented to me.

A. You have stated that the annual report of the corporation to the Michigan Department of Commerce for 1967 lists myself as secretary of the corporation.

I have enclosed, marked as "Exhibit A", a copy of the minutes of the 1966 annual meeting of the Board of Directors of the corporation, held April 27, 1966. As you will note, I was named as secretary of the corporation at that meeting.

I have also enclosed a copy of the minutes of the 1967 annual meeting of the Board of Directors of the corporation, held April 26, 1967, marked as "Exhibit B". As you will note, I was not elected as secretary of the corporation at that annual meeting.

I have also enclosed, marked as "Exhibit C", a copy of the minutes of the 1968 annual meeting of the Board, held April 24, 1968. As you will note, I was not elected as secretary or to any other office of the corporation.

I have also enclosed, marked as "Exhibit D", a copy of the minutes of the 1969 annual meeting of the Board of Directors held September 25, 1969. As you will note, I was elected as assistant-secretary of the corporation at that meeting.

Minutes for the annual meeting of the Board of Directors held for 1970, which meeting was held April 22, 1970, and a copy of which is attached marked as "Exhibit E", confirm that I was elected to no corporate office and I held no office in the corporation from that time until sale of the business and dissolution of the corporation on January 15, 1979. The officers elected April 22, 1970 held office until the termination of the corporation's existence, being renamed each year from 1970 forward.

In summary, I was elected as secretary of the corporation at the April 27. 1966 annual meeting. I was not elected as secretary of the corporation at the April 26, 1967 meeting or at any meeting thereafter. Thus, I was secretary of the corporation for the portion of 1967 which expired April 26, 1967.

If the Michigan Annual Report of the corporation for 1967 was dated prior to April 26, 1967, then it was correct in showing myself as the secretary. If the 1967 Annual Report was signed subsequent to April 26, 1967, then if it named myself as secretary it was incorrect.

The annual reports of a corporation to the Michigan Department of Commerce are customarily prepared by the accountant for the corporation. The primary information provided by an annual report is a balance sheet setting forth the net worth of the corporation, and that net worth determines the amount of the annual corporate franchise fee to the State of Michigan. As attorney for the business I did not have any of the accounting information in my possession and had no role whatsoever in the preparation of the annual reports. As a matter of fact, I have never taken any part in the preparation of the annual reports for any corporation which I have represented. My files do not contain copies of any annual reports filed by Shorthorn Steak House, Inc., such copies were not presented to me and I did not review them. It is my assumption and belief that the accountants for the business prepared the Michigan Annual Reports during each year of the corporation's existence.

B. You have stated in your questions that the annual reports for 1968 and 1969 list me as Vice-President of the corporation, "although this entry is marked through on the copies of the reports obtained by the Committee."

There is no discrepancy between the Michigan Annual Reports for 1968 and 1969 and the corporate minutes. I assume that you obtained copies of the 1968 and 1969 Michigan Annual Reports from the Michigan Department of Commerce. Thus, it certainly would seem to be the logical and inescapable conclusion that while the report as originally typed erroneously listed me as Vice-President, this error was corrected by striking out my name prior to the filing of the reports in each such year. Thus, there was no discrepancy whatsoever between the 1968 and 1969 Michigan Annual Reports and the corporate minutes. Further, there is no discrepancy whatsoever between the information in those reports as filed with the Michigan Department of Commerce and the information which I have provided to the Committee.

At no time have I been a vice-president of the corporation. If the accountant or anyone else who participated in the preparation of the annual reports for 1968 and 1969 listed my name as a vice-president of the corporation, this was simply a mistake. The fact that this designation was marked through on the 1968 and 1969 reports confirms, as I have said, that the erroneous information was discovered prior to filing and was corrected.

C. Insofar as the fact that the 1967 and 1968 Annual Reports indicate a long term indebtedness to me of $5,000.00 is concerned, that information is simply incorrect. As I have said, I had no role in the preparation of annual reports, either for this corporation or any other corporation which I have represented. At no time did I ever loan any funds to this corporation. While this figure may have been intended to show an account payable to myself for professional services, I am unable to say, more than twenty years later, with any certainty that this was the case. I am able to say, however, with absolute certainty, that at no time was there any loan or advance of $5,000.00 or any other sum to the corporation by myself, or any note payable or any other evidence of indebtedness given to me. The information in those reports is simply incorrect in that regard.

My participation as a member of the Board of Directors of the corporation was based upon the requirement of the statute, when this corporation was organized in 1962, that there be at least three directors. Since Mr. Wyant and Mr. Fogell each owned 50% of the stock, I, as their attorney, agreed to have my name added as the third required director, and that procedure was then followed throughout the entire history of the corporation. Mr. Wyant eventually purchased Mr. Fogell's shares in 1969, and in 1970 Mr. Wyant's wife then replaced Mr. Fogell as a director.

What should be kept in mind is the fact that as a director I at no time took any active part in the management or operation of this business. From 1962 until October 9, 1969 Mr. Wyant and Mr. Fogell operated the business as equal owners thereof, and from October 9,1969 until dissolution of the corporation in 1979, Mr. Wyant alone operated the business. I had no role in supervising, hiring or discharging employees, or in any other operational aspect of the business. I did handle the legal business of the restaurant, such as negotiating leases, handling any litigation, and the various legal questions that arise from time to time in any ongoing business concern. My service as a director consisted primarily, on the other hand, of attending the annual meeting and preparing minutes thereof. Also, during the periods in which I was secretary, I signed minutes.

2. As I recall, in 1970 Sports Illustrated reported that pitcher Denny McLain of the Detroit Tigers had become involved in illegal bookmaking activities in various cities with a number of individuals,including Clyde Roberts, who served as manager of the Shorthorn Steak House in Flint. Although I am not certain of the dates, Mr. McLain was hired to play the organ and entertain at the restaurant for a period of two or three weeks in the Winter in 1967, as best I can remember. The magazine article and subsequent newspaper articles in which the allegations appeared regarding the gambling matter were not printed until some three years or more later, after McLain had long since left the employ of the restaurant.

It is my understanding that Don Wyant, who in 1970 was the sole owner of the restaurant, did discuss the situation with Mr. Roberts, and that Mr. Roberts told him that he had not been involved in any gambling operations, although he had personally made bets. Mr. Wyant, so I was informed, emphasized to Roberts that gambling activities could not and would not be tolerated at the restaurant.

I was not requested to take any action or to participate in any discussions regarding Mr. Roberts, and I did not do so. My information came only from Mr. Wyant. I did appear with Don Wyant, whom I knew then, and know today, to be a decent, law abiding and eminently honorable citizen, at a television interview on a local television station at which time I indicated my complete faith in his integrity. I was convinced then, and I am convinced today, that neither he nor Mr. Fogell had been involved in or had any knowledge of gambling operations at the restaurant and I had never had any knowledge nor had I ever heard any rumors of McLain and Roberts having been involved in any gambling operations.

It should also be emphasized that after these newspaper and magazine allegations were made, some three years and more after the alleged activities, neither Mr. Roberts nor any other person associated with the restaurant was charged with, indicted for or convicted of any offense whatsoever.

It strikes me that it would have been harsh indeed for Mr.Wyant to have discharged or disciplined Mr. Roberts, who was an employee who had performed many years of faithful and efficient service, for allegations which related to events more than three years in the past, and which concerned activities of which Mr. Roberts was presumptively innocent.

Dated: July 18, 1988.

Paul V. Gadola
PAUL V. GADOLA

STATE OF MICHIGAN)
: ss.
County of Genesee)

On this 18th day of July A.D. 1988, personally appeared before me Paul V. Gadola and made oath that he has read the foregoing Answers to Public Written Questions submitted to him by Senator Patrick Leahy on behalf of the Committee on the Judiciary of the United States Senate by him subscribed and that he knows the contents thereof and that the same are true of his knowledge, except matters therein stated to be on his information and belief and as to those matters he believes them to be true.

Susan K. Duby

Susan K. Duby, Notary Public
Genesee County, Michigan
My Commission Expires: 7/14/91.

MINUTES OF 1966 ANNUAL MEETING OF BOARD OF DIRECTORS OF SHORTHORN STEAK HOUSE, INC.

Flint, Michigan April 27, 1966

The annual meeting of the Board of Directors of SHORTHORN STEAK HOUSE, INC. was held at 2907 East Court Street, Flint, Michigan, on Wednesday, the 27th day of April, A. D. 1965, at 9:30 P.M.

Present were the following Directors:

Donald L. Wyant
Donald H. Fogell
Paul V. Gadola, Jr.

All Directors being present, they thereby waived the requirement of written notice of the meeting.

Donald H. Fogell was elected Chairman of the meeting, and Paul V. Gadola, Jr. was duly elected Secretary of the meeting.

The Secretary read the minutes of the meeting of March 8, 1965, which minutes were unanimously approved and accepted by the Directors.

Upon motion made, seconded, and unanimously adopted, the following officers of the Corporation were elected for the ensuing year:

~~President~~: TREASURER	Donald H. Fogell
Secretary:	Paul V. Gadola, Jr.
~~Treasurer~~: PRESIDENT	Donald L. Wyant

The President and Treasurer then made reports to the Board regarding the business, affairs, and financial condition of the Corporation. The Directors then discussed the business, affairs, prospects, activities, and financial condition of the Corporation.

By unanimous vote, the following salaries were fixed:

NAME	TITLE	AMOUNT
DONALD H. FOGELL	~~President~~ TREASURER	# 195^{00} WEEKLY
DONALD L. WYANT	~~Treasurer~~ PRESIDENT	# 195^{00} WEEKLY

Effective APRIL 27, 1966, and until further order of the Board of Directors.

By unanimous vote, the prior action of the President of the Corporation in setting and paying salaries to the Officers of the Corporation was approved and ratified.

EXHIBIT A

MINUTES OF 1966 ANNUAL MEETING OF BOARD OF DIRECTORS OF SHORTHORN STEAK HOUSE, INC.
(Continued)

There being no further business to transact, the meeting was thereupon adjourned.

Approved:

Donald L.
President

Paul V
Secretary

Donald

EXHIBIT A

MINUTES OF 1967 ANNUAL MEETING OF BOARD OF DIRECTORS OF SHORTHORN STEAK HOUSE, INC.

Flint, Michigan April 26, 1967

The annual meeting of the Board of Directors of Shorthorn Steak House, Inc. was held at 2907 East Court Street, Flint, Genesee County, Michigan, on Wednesddy, the 26th day of April, 1967, at 9:30 P.M.

Present were the following Directors:

Paul V. Gadola, Jr.
Donald H. Fogell
Donald L. Wyant

All Directors being present, they thereby waived the requirement of written notice of the meeting.

The Secretary read the Minutes of the meeting of September 21st, 1966, which Minutes were thereupon approved and accepted by the Directors.

By unanimous vote the following persons were elected to the offices placed opposite their respective names, to hold office for the term provided in the By-Laws, namely:

President: Donald L. Wyant
Secretary: Donald H. Fogell
Treasurer: Donald H. Fogell

The President and Treasurer then made reports to the Board regarding the business, affairs, and financial condition of the Corporation. A discussion followed.

By unanimous vote, the following salaries were fixed:

NAME	TITLE	AMOUNT	
Donald H. Fogell	Secretary-Treasurer	$300.00	weekly.
Donald L. Wyant	President	$300.00	weekly.

By unanimous vote, the prior action of the Officers in fixing and paying such salaries was approved and ratified. The meeting was then adjourned.

Approved: Donald L. Wyant D.H. Fogell
President Secretary

EXHIBIT B

MINUTES OF THE 1968 ANNUAL MEETING OF THE BOARD OF DIRECTORS OF SHORTHORN STEAK HOUSE, INC.

Flint, Michigan April 24, 1968

The annual meeting of the Board of Directors of Shorthorn Steak House, Inc. was held at 910 South Dort Highway, Flint, Genesee County, Michigan, on Wednesday, April 24, 1968, at 9:30 p.m.

Present were the following Directors:

Paul V. Gadola, Jr.
Donald H. Fogell
Donald L. Wyant

All Directors being present, they thereby waived requirement of written notice of the meeting.

The Secretary read the Minutes of the meeting of April 26, 1967, which Minutes were thereupon approved and accepted by the Directors.

By unanimous vote, the following persons were elected to the offices placed opposite their respective names, to hold office for the term provided in the By-Laws, namely:

President:	Donald L. Wyant
Secretary:	Donald H. Fogell
Treasurer:	Donald H. Fogell

The President and Treasurer then made reports to the Board regarding the business, affairs, and financial condition of the corporation. A discussion then followed.

By unanimous vote, the following salaries were then fixed:

Donald H. Fogell, Secretary-Treasurer, $\$350^{00}$ weekly.

Donald L. Wyant, President, $\$350^{00}$ weekly.

The following resolution was then unanimously adopted:

"RESOLVED, that the action of the officers of the corporation in entering into an agreement for the purchase of a Class C bar business and it's assets from John W. Healey be and the same is hereby approved, and ratified. Be it further resolved, that the officers of the corporation be and are hereby authorized to take any necessary and appropriate action to complete said transaction and to obtain transfer of a Class C liquor license from said John W. Healey."

EXHIBIT C

MINUTES OF THE 1968 ANNUAL MEETING OF BOARD OF DIRECTORS OF SHORTHORN STEAK HOUSE, INC. (cont'd)

The following resolution was then unanimously adopted by the Board:

"RESOLVED, that the officers of this corporation be and are hereby authorized to execute on behalf of the corporation, a Lease of certain premises, commonly known as 3~~460 South~~ 3559 S. Dort Highway, Flint, Michigan, from Marian Agree, an agreement for the purchase of furniture, fixtures and equipment at said premises, a security agreement and Promissory Note, and any other appropriate documents relating to the same, on such terms as shall to the officers seem in their discretion reasonable and advisable."

There being no further business to come before the Board, the meeting was thereupon adjourned.

Approved:

Donald L Wyant
President

H H Fogell
Secretary

EXHIBIT C

Sec'y Init. D.H.F. . . . Page ~~60~~ 61

MINUTES OF THE 1969 ANNUAL MEETING OF BOARD OF DIRECTORS SHORTHORN STEAK HOUSE, INC.

Flint, Michigan September 25, 1969

The annual meeting of the Board of Directors of Shorthorn Steak House, Inc. was held at 1339 Mott Foundation Building, Flint, Genesee County, Michigan, on Thursday, September 25, 1969, at 8:00 p.m.

Present were the following Directors:

Paul V. Gadola
Donald L. Wyant
Donald H. Fogell

All Directors being present, they thereby waived requirement of written notice of the meeting.

The Secretary read the Minutes of the last meeting of the Directors, held August 5, 1969, which Minutes were approved by the Directors.

By unanimous vote, the following persons were elected to the office placed opposite their respective names, to hold office for the term provided in the By-Laws, namely:

PRESIDENT: Donald L. Wyant
SECRETARY: Donald H. Fogell
TREASURER: Donald H. Fogell
ASST. SECRETARY: Paul V. Gadola

The President and Treasurer then made reports to the Board concerning the business, affairs and financial condition of the corporation.

By unanimous vote, the following salaries were then fixed:

Donald L. Wyant, President, $ 350.00 weekly.

Donald H. Fogell, Secretary-Treasurer, $ 350.00 weekly.

There being no further business to come before the meeting, the meeting was thereupon adjourned.

Approved:

Donald L Wyant
President

Donald H Fogell
Secretary

EXHIBIT D

MINUTES OF 1970 ANNUAL MEETING OF BOARD OF DIRECTORS
SHORTHORN STEAK HOUSE, INC.

. . . .

Flint, Michigan April 22, 1970

The annual meeting of the Board of Directors of Shorthorn Steak House, Inc. was held at 1339 Mott Foundation Building, Flint, Michigan, on Wednesday, April 22, 1970, at 4:00 p.m.

Present were the following Directors:

Donald L. Wyant,
Mary J. Wyant, and
Paul V. Gadola

All Directors being present, they thereby waived requirement of written notice of the meeting as required by the By-Laws of the corporation.

The Secretary read the Minutes of the last meeting of Directors, held February 13, 1970, and also the Minutes for the meetings held December 12, 1969 and November 4, 1969, all of which were approved by unanimous vote of the Directors.

By unanimous vote, the following persons were elected to the office placed opposite their respective names, to hold office for the term provided in the By-Laws, namely:

PRESIDENT:	Donald L. Wyant
VICE-PRESIDENT:	Mary J. Wyant
SECRETARY:	Mary J. Wyant
TREASURER:	Donald L. Wyant
ASS'T. SECRETARY:	Donald L. Wyant

By unanimous vote, the following salaries were then fixed for the ensuing year:

Donald L. Wyant, President and Treasurer; $ 350.00 weekly.

Mary J. Wyant, Secretary; $ 150.00 weekly.

The President then gave a report on the financial condition of the company and its plans for the ensuing year, after which the meeting was adjourned.

Approved:

Donald L. Wyant
President

Mary J. Wyant
Secretary

THE CIRCUIT COURT
FOR
THE SEVENTH JUDICIAL CIRCUIT OF MICHIGAN

DONALD R. FREEMAN
CIRCUIT JUDGE

FLINT, MICH.
48502

June 29, 1988

Senator Patrick J. Leahy
Russell Senate Office Building
Room 443
Washington, D.C. 20510

Dear Senator Leahy:

I write this letter on behalf of Paul Gadola, a promiment Flint Attorney whose name has been submitted for appointment as Federal District Judge.

I am pleased to have viewed the recent news report that indicated your Committee is prepared to conduct a hearing on his nomination.

Mr. Gadola is a man of the highest quality, with eminent creditionals which make him suitable to serve as a Federal Judge. His reputation is unblemished, both as a gentleman and as a student of the law. I am certain that a total review of his background can lead only to the conclusion that our courts will benefit in his public service.

Recent news reports, including one appearing in the New York Times, have reported on the serious problems relating to the shortage of Federal Judges.

Within this community, a substantial number of lawyers have expressed the view that the appointment of Paul Gadola to the Federal Bench would be an asset to this community and a benefit to the people of this Country.

I would be willing to appear at any Committee Meeting, including Washington, for the purpose of testifying on his superb qualities. I am most appreciative for your consideration and any support you can give.

Respectfully yours,

Donald R. Freeman

Donald R. Freeman
Circuit Judge

DRF:db

(313) 232-6000

GENESEE COUNTY BAR ASSOCIATION
SUITE 216, McKINNON BUILDING
653 S. SAGINAW STREET
FLINT, MICHIGAN 48502

Bernard
pls draft
response

August 9, 1988

The Honorable Joseph R. Biden, Jr.
United States Senate
Washington D.C. 20510

RE: Nomination of Paul V. Gadola - U.S. District Judge, Eastern District of Michigan

Dear Senator Biden:

I am writing this letter to inform you that at a special meeting of the Board of Directors of the Genesee County Bar Association on July 28, 1988, our organization took a rare step in formally endorsing the nomination of Paul V. Gadola to the position of U.S. District Judge for the Eastern District of Michigan. This endorsement is a clear indication that the lawyers in our community who have dealt with Paul Gadola over the years and are intimately familiar with his formidable legal ability and his reputation for fairness and integrity, firmly believe that his appointment would be an asset to the federal bench.

Additionally, I might add that, although I do not personally share Paul's political philosophy, nonetheless, I wholeheartedly support this endorsement based on Paul's overall qualifications and temperament for this position. Even in the heat of battle, he has always been able to maintain his professional demeanor and civility towards lawyers and litigants. I can assure you that he enjoys the highest esteem of his colleages in the Genesee County Bar Association.

If I can answer any questions about Paul Gadola's qualifications for an appointment to the federal bench, please do not hesitate to call on me.

Sincerely yours,

Bruce A. Newman
President

BAN/ksc

cc: Honorable Robert C. Byrd
Honorable Howard M. Metzenbaum
Honorable Dennis DeConcini
Honorable Patrick J. Leahy
Honorable Howard Heflin
Honorable Paul Simon
Honorable Edward M. Kennedy
Honorable Stom Thurmond
Honorable Orrin G. Hatch
Honorable Alan K. Simpson
Honorable Charles E. Grassley
Honorable Arlen Specter
Honorable Gordon J. Humphrey

Senator **Leahy**. Mr. Voorhees, would you come forward, please. You have already been sworn. We are delighted to have you here, too, sir. I might say by having this hearing, I have stopped having Senator Helms ask me about it three times a day. We really are trying to get these through and get them done.

Mr. Voorhees, did you have an opening statement?

TESTIMONY OF RICHARD L. VOORHEES, NOMINATED TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Mr. **Voorhees**. Just briefly, Mr. Chairman.

Senator **Leahy**. Go ahead, sir.

Mr. **Voorhees**. I might say that it is a great pleasure for me to be here, and I appreciate the committee's consideration in bringing the matter on as it has.

Senator **Leahy**. Thank you. Senator Hatch, did you have an opening statement?

Senator **Hatch**. I do not. I am just happy to welcome you here, Mr. Voorhees. It has been a long time getting you here, and we are sorry for the delays, but we have had a lot of judges in this administration and we are trying to do the best we can. We are happy to have you here, and your family and your friends, and we hope this will go expeditiously from this point on.

Mr. **Voorhees**. Thank you, Senator.

Senator **Leahy**. Now Mr. Voorhees, you have had a varied litigation practice. You have been in both State and Federal courts. Incidentally, Mr. Gadola, I should say, there is really no need for you to stay. You are welcome to stay, if you would like, but if you and Mrs. Gadola want a chance to be out in this kind of weather, or if you have other things you want to do here, please feel free.

Mr. **Gadola**. Thank you very kindly. I think we will stay for a few minutes.

Senator **Leahy**. Okay. As I say, Mr. Voorhees, your litigation practice has been both in State and Federal courts. Looking at this practice, I have to assume that you have probably had the luck of the draw, like Senator Hatch, who has had a lot of litigation experience, or myself. I assume you have appeared before good judges and you have appeared before some who are not so good.

We are not going to get you in trouble with the bench by asking you to name the good ones and the bad ones, but let me ask you this. And again it goes back to the question, really, that Senator Thurmond often asks. Senator Thurmond and I sometimes disagree on some issues of judicial nominees. The thing we do agree on the most is the importance of the question of judicial temperament.

Based on that experience, just tell me, what do you think are the attributes of a good trial judge?

I mean, if you are going in to try a case—it does not make any difference, civil or criminal—what do you most want to see in a judge and what do you least want to see in a judge?

Mr. **Voorhees**. The things that I would like to see the most, and have enjoyed most over the years have been forbearance by the trial judge, patience, and particularly, I might say, a willingness to understand and hear what the lawyers have to say, so that these lawyers, on behalf of their clients, have an adequate reading of the law in the particular case.

So those are the main things. The things that I would least like in a judge are an attitude of robitis, as I have heard it described—an attitude that the judge is somehow better than the others involved in the process. To me, that is to be avoided at all costs.

Senator LEAHY. I would ask you, when you go on the bench, to periodically take that little piece out of the transcript and just—you know—read it yourself. I think, one of the most difficult things for a judge is to feel the frustration of a particular case sometimes caused by inadequate counsel. There is such a temptation to step in and straighten everybody out. And maybe they deserve it, but you have to hold yourself back.

I know you have never been a judge, but have you ever had any experience in a quasi-judicial capacity? Like an arbitrator or referee?

Mr. VOORHEES. Only as chairman of the Gaston County board of elections. We had some three hearings over a period of several years in which I was both a board member in a minority status, and a chairman with a majority status. And in those cases we heard litigants and had numerous phone calls, of course, from interested parties, and had the responsibility to come out with a fair and just result.

Senator LEAHY. You appear to have been actively involved in pro bono work. That certainly is an area that is of concern to me, and many other members of the committee.

I get concerned when judges go on the bench and they have not had some pro bono experience. In fact I have preferred those judges who encourage members of the bar to get involved in pro bono work.

Now you have accepted numerous appointments to represent indigents accused of crime. I guess one was a highly publicized capital murder case.

What bothers me with some nominees who have come here is they have told me they have very busy practices and do not have time to represent indigent defendants, or may personally find the crimes they are accused of to be distasteful. I am not sure who finds crime to be to their taste, for that matter. Do you think this is an important experience, in fact almost a necessary experience, for a lawyer to have this kind of pro bono work?

Mr. VOORHEES. I do. I think it is both important, substantively, for the lawyer to have that experience, because it necessarily requires them to deal with all the elements of society, and of course a lawyer, I do not think, can be effective, if he does not understand society, really, from top to bottom.

So I think it is important in that respect. It is also important for the image of the bar, and for the perception of justice among our citizens, to realize that lawyers are not constantly sitting back, receiving fees from large corporate clients, but in fact are working for all elements of society, without regard to their own cost, in many cases, or, rather, their own receipts.

Senator LEAHY. In my own State of Vermont, we have had a lot of judges who have actively encouraged the bar, at the county level, and the State level, and the Federal bar, to get involved in such kinds of pro bono work.

Would you feel that would be something that you would want to do as a Federal judge, to encourage that kind of continued activity?

Mr. **VOORHEES**. Very definitely I would. We have something called the Pro Bono Honor Roll in North Carolina, and it has gotten to be something of a point of pride to be on that list. I am proud to be there myself.

Senator **LEAHY**. Well, thank you, and let me encourage you to do that because, you know, it sometimes helps. In some law firms it sometimes helps when those who are so inclined can point to the managing partner, or the senior partner, and say Judge So and So is also saying this is a good idea. It gets it across.

Mr. **VOORHEES**. Right.

Senator **LEAHY**. Now on your questionnaire, you indicate that you were a director of the North Carolina Fund for Individual Rights or NCFIR, for 10 years, until just before you were nominated to the Federal bench.

You were also the vice president of the organization for 7 years, and its president for about a year. What is the North Carolina Fund for Individual Rights? What does it do?

Mr. **VOORHEES**. The fund is a legal aid association organized for the purpose of defending individuals who apply for assistance. The purpose is, in general, the thrust of it was to redress abuses of individual rights by governmental authority, whether it be the State, the local, or the national level.

I think that—the question was what it was. Was there another facet to that question?

Senator **LEAHY**. Well, what does it do?

Mr. **VOORHEES**. Oh, what it—yes. Over the—to give a little perspective on it, it was an organization formed in approximately 1975. It actually began to take cases in 1976, as I understand it. I became involved with it by becoming a director in 1977.

It actively took cases and solicited funds for the purpose of paying for counsel for its causes, up to about 1980. So, roughly 1977 to 1980, was the period of its active time. After that its executive director came to Washington and it took no more cases, and only played out those cases which it already had, and it ceased to raise any funds.

Senator **LEAHY**. The——

Mr. **VOORHEES**. Excuse me.

Senator **LEAHY**. I am sorry.

Mr. **VOORHEES**. I was going to mention: I counted some 19 cases that it held over the entire period of its existence, cases in which it provided legal assistance to litigants.

Senator **LEAHY**. Who invited you to join the board?

Mr. **VOORHEES**. A gentleman named Hugh Joseph Beard, who I met in 1973. He was a—had been a student at Davidson, and also attended the University of North Carolina Law School at Chapel Hill, as I did.

Senator **LEAHY**. What was your connection with Mr. Beard?

Mr. **VOORHEES**. Just a friend. He came—as I say, I met him in 1973, and he came to be a friend, and he asked me to be on that board. That involved some five or six meetings over a period of the time that I was involved with the fund.

Senator **Leahy**. Now the summary of the cases that the fund was handling, that you have given the committee, I will put in the record, along with your cover letter.

[The material follows:]

RICHARD L. VOORHEES
ATTORNEY AT LAW
317 SOUTH YORK STREET
POST OFFICE BOX 1931
GASTONIA, NORTH CAROLINA 28053-1931

704/867-2301

June 16, 1988

Senate Judiciary Committee
S.D. 224
Dirksen Office Building
Washington, D.C. 20510

Attention: Mr. Steve Metalitz

Dear Mr. Metalitz:

I enclose a copy of an NCFIR "Advisory" dated July 1, 1979. It mentions the bulk of the cases with which the Fund dealt.

I also enclose a list of officers and directors as of March 31, 1977, with biographical information. Most of these remained at least until the winding down period.

Lastly, I enclose a copy of a schedule of seminar topics. This 1977 seminar is the only one to my knowledge which the Fund sponsored during its existence.

I enjoyed talking with you this afternoon. Please let me know if I may be of any further help. I look forward to seeing you in Washington on the 22nd.

Very truly yours,

Richard L. Voorhees

Richard L. Voorhees

RLV/kc

enclosures

NCFIR

ADVISORY

NORTH CAROLINA FUND FOR INDIVIDUA
P. O. BOX 30203, CHARLOTTE, NORTH CAROL

NUMBER ONE
July 1, 1979

Wilson J. Bryan, Jr., the President of the NCFIR, resigned on July 1, 1979. Mr. Bryan had been Sales Manager, Organic Chemicals, for the Sodyeco Division of Martin-Marietta Corporation, in Charlotte, but moved to Baton Rouge, Louisiana, to take the position of Market Development Manager, Commercial Development, for Ethyl Corporation. Herbert W. Lee, Vice-President of Home Savings and Loan Association of Greenville, North Carolina, who has for three years served as Vice-President of the Fund, will move up to the office of President. Richard D. Voorhees, of Gastonia, and Dr. Kent Gardner, of Charlotte, will continue to serve as Secretary and Treasurer, respectively.

This Advisory is made possible by voluntary contributions from private individuals, companies and foundations, who are committed to the preservation of individual rights in the face of unlawful and unconstitutional government conduct, through litigation and education.

PENDING CASES

In Arrington v. Taylor, 380 F. Supp. 1348 (M.D.N.C. 1974), aff'd, 526 F. 2d 587 (4th Cir. 1975), cert. denied, 424 U.S. 913 (1976), the Plaintiffs challenged the practice by the University of North Carolina at Chapel Hill of subsidizing the publication of a student newspaper, The Daily Tar Heel. The newspaper made a policy of endorsing political, ideological, and religious positions, many of which were disagreed with by the Plaintiffs. The lawsuit was brought upon the grounds that, first, an agency of the State of North Carolina ought not to be allowed to favor one newspaper over others through subsidization because this would abridge the Freedom of the Press; second, an agency of the state ought not to be allowed to promote its favored positions on political and other controversial subjects because this would abridge the Freedom of Speech and Conscience of all citizens; and, third, an agency of the state ought not to be allowed to compel its citizens to subsidize political positions with which they disagree.

The action was dismissed in the United States District Court in Greensboro, which decision was affirmed by the United States Court of Appeals for the Fourth Circuit. The Plaintiffs then sought a writ of certiorari from the United States Supreme Court, which was denied. [CLOSED, See Kania v. Taylor, below]

In Uzzell v. Friday, 401 F. Supp. 775 (M.D.N.C. 1975), rev'd, in part 547 F. 2d 801 (4th Cir. 1977), rev'd in part on rehearing 558 F. 2d 727 (4th Cir. 1977) judgement vacated 438 U.S. 912, 57 L. Ed 2d 1158, 98 S. Ct. 3139 (1978), rev'd in part on remand, 591 F. 2d 997, (4th Cir. 1979), the Plaintiffs challenged three practices of the University of North Carolina at Chapel Hill which discriminated among the students at the University upon the grounds, solely, of race.

First, the University subsidizes an organization which excluded all White students solely upon the ground of race, the Black Student Movement. Second, the University requires that four of the seven members of any student court trying a Black student for a University offense, must, if the student so requests, be Black. Third, the University Student Government requires that two out of the twenty members of the Campus Governing Council be Black.

The District Court found for the University on all three parts of the Uzzell suit. The United States Court of Appeals for the Fourth Circuit Circuit reversed the District Court with regard to the second and third practices of the University, which reversal was thereafter reconsidered by the entire seven member court, and the reversal upheld. The University sought a writ of certiorari from the United States Supreme Court, which request was granted. The decision of the Appeals Court was vacated by the Supreme Court and the case was remanded to the Court of Appeals for further proceedings in light of the Bakke decision. Upon reconsideration, the entire Court of Appeals again upheld the reversal.

The case is now before the United States District Court in Greensboro, North Carolina, for entry of judgement.

In Joyce v. Equal Employment Opportunity Commission, Mr. Brice M. Joyce challenged the racial discrimination of the EEOC against White male employees. Mr. Joyce, one of four White professional employees of the EEOC in North Carolina out of a total of twenty two, maintained that he was discharged from the EEOC because of his race.

This case was brought under the authority of the Civil Rights Acts of 1871 and 1964, and was dismissed upon request of the Plaintiff because of personal health considerations. [CLOSED]

In Nye v. In-Line, Inc., a small Eastern North Carolina construction corporation defended a nominal fine ($45.00) upon grounds that the fine violated the rights guaranteed under the Constitution of North Carolina and the United States to a jury trial and from searches without a warrant granted by a judge upon a finding of probable cause.

This case was dismissed when it became apparent that other litigation, unconnected with this challenge, would better present both issues to the courts. [CLOSED, See Gooden v. Brooks, below]

In Poovey v. Edmisten, a member of the North Carolina General Assembly, a student of the University of North Carolina at Wilmington, and two North Carolina taxpayers challenged the provisions of Chapter 116 of the North Carolina General Statutes, which require that four of the thirty two members of the Board of Governors of the University of North Carolina must be members of a "minority race."

Both the Plaintiffs and the University have conducted substantial discovery, including the deposition of former Governor James E. Holshouser, Jr.

This case was brought under the authority of the Civil Rights Acts of 1871 and 1964, and is now pending before the United States District Court for the Eastern District of North Carolina at Raleigh.

NORTH CAROLINA FUND FOR INDIVIDUAL RIGHTS
Post Office Box 30203
Charlotte, No. Car. 28230

Gentlemen:

____ Please correct your records to reflect my address as shown below.
____ Please send additional information concerning the NCFIR to me at the address shown below.
____ Please send this Advisory to the person shown below.

NAME: ______________________________

ADDRESS: ______________________________

____

In *Knight v. Hunt* and *Braatz v. Hunt*, the same two Plaintiffs challenged the use of public funds for the purpose of advocating and promoting the adoption of certain proposals before the voters on November 8, 1977. In the *Knight* case, the two Plaintiffs requested that this utilization of public funds, specifically for the purpose of publishing and distributing a brochure promoting the $300,000,000 Highway Improvement Bond Issue be enjoined and prohibited. In the *Braatz* case, the same two Plaintiffs asked for the return of public funds utilized to promote the two bond issues for the succession amendment to the public treasury.

A Superior Court Judge has temporarily restrained the Governor from spending further state funds for the purpose of promoting the bond issue. Thereafter the two cases were dismissed on the ground that the election had already taken place, and that the Attorney General of North Carolina is the only person who can properly bring the suit to recover unlawfully disbursed funds.

Following this decision, the Attorney General of North Carolina was requested to perform his duties in connection with this matter. Thereafter, a total of $4219.42 was recovered from the Secretary of Transportation and the Superintendent of Public Instruction. [CLOSED]

In *Bostick v. Byrd*, two North Carolina residents who had applied for admission to the Law School at the University of North Carolina. at Chapel Hill and who were not granted admission challenged a Special Admissions Policy established by the

Law School by which a maximum of 20 persons, described by the Law School as "culturally, economically, or educationally disadvantaged" and alleged by the Plaintiffs to be designed to include only members of minority races, were admitted each year.

An organization purporting to represent Black undergraduate students in North Carolina and represented by the NAACP was allowed to intervene.

This case was settled after the UNC-CH Law School substantially altered its admissions policies, made a payment equal to the difference in tuition between UNC-CH Law School and Wake Forest University Law School, and partially reimbursed the Plaintiffs and the NCFIR for legal fees, a total settlement in the amount of $9,000.00. [CLOSED]

In *Patterson v. National Labor Relations Board*, ___ F.Supp. ___ (E.D.N.C. 1979), five employees of J. P. Stevens & Co., Inc., at Roanoke Rapids, North Carolina, brought suit against the National Labor Relations Board, its Chairman, Members, Executive Director and Regional Director, requesting a court order to compel the Board to process a decertification petition filed by a majority of the employees at the Stevens facilities in Roanoke Rapids.

The Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, represented by former United States Supreme Court Justice Arthur M. Goldberg, requested that it be allowed to intervene in opposition to the employees. The District Court granted a motion to dismiss this action on grounds that the decision of the N.L.R.B. is not subject to judicial review of any sort. The Plaintiffs have appealed.

This case was brought under the authority of the First Amendment to the Constitution of the United States and is now pending before the United States Court of Appeals for the Fourth Circuit.

In Kania v. Taylor, three undergraduate students at the University of North Carolina at Chapel Hill challenged the practice by the University of subsidizing the publication of the student newspaper, The Daily Tar Heel. The same issues raised in Arrington v. Taylor are raised in this lawsuit. A substantially different result is expected because of the intervening decision of the United States Supreme Court in Abood v. Detroit Board of Education, 431 U.S. 209 (1977).

This case was brought under the authority of Civil Rights Acts of 1871 and is now pending before the United States District Court for the Middle District of North Carolina at Durham.

In Gooden, et al., v. Brooks, 39 N.C. App. 519, 251 S. E. 2d 698, disc. rev. granted, ______ N.C. _____, 254 S. E. 2d 923 (1979), five individuals and one corporation challenged the constitutionality of a provision of the North Carolina OSHA law which allowed the inspection of the non-public portions of places of business without search warrants.

The Superior Court dismissed this suit, but the North Carolina Court of Appeals reversed this holding, declaring this part of the North Carolina OSHA Act unconstitutional. The North Carolina Supreme Court has decided to review this decision.

This case was brought under the authority of the Civil Rights Act of 1871, and is now pending before the Supreme Court of North Carolina.

TAX STATUS

The North Carolina Fund for Individual Rights is a litigating foundation recognized as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code, contributions to which are deductible from federal and state income taxes. A copy of the ruling recognizing this status is available upon request.

Senator **Leahy**. Let me see if I can go down through some of them. I think several of the cases—and correct me if you disagree with this interpretation—but I think several of the cases can fairly be described as reverse discrimination cases, in which whites claimed they were the victim of discrimination that favors blacks.

Several more seemed to be labor law cases challenging procedures under a State Occupational Safety and Health Law, for example, and seeking decertification of a union as the collective bargaining representative of employees.

Is this listing a reasonably representative cross-section, mostly reverse discrimination and labor law matters?

Mr. **Voorhees**. Of the 19 cases, I think approximately four involved what you referred to as reverse discrimination. There was only one labor law case per se, and that was the *Patterson* v. *NLRB* case, involving a J.P. Stevens mill.

There were two OSHA cases, which I would not consider labor law matters, but they involved a North Carolina law concerning occupational health and safety.

Those two were, in effect, one case, because I think the first one was dismissed in favor of proceeding with the other. So, in other words, of the 19 cases, 2, those 2 were OSHA, there was one labor law case, and there were 4 cases involving discrimination under the 14th amendment.

Senator **Leahy**. The types of cases involved there are not typical of the cases that you handle in your private practice, are they?

Mr. **Voorhees**. That is correct. That was a blip on my chart of legal activity.

Senator **Leahy**. As a board member and officer, did you have a role in selecting the cases to be handled by the fund, or monitoring the litigation?

Mr. **Voorhees**. Not monitoring the litigation because that was a matter between the attorney who handled the matter and the clients. The only role the board had was to pass on the applications that were presented through the executive director.

Senator **Leahy**. So you had some responsibility in that regard?

Mr. **Voorhees**. That is correct.

Senator **Leahy**. What about fundraising? First of all, it was a tax-exempt organization, was it not?

Mr. **Voorhees**. It was, 501(c)(3).

Senator **Leahy**. Where did you get most of your money?

Mr. **Voorhees**. Most of it came from mailings that the executive director sent out. He, as I understand it, hired various lists from organizations that he thought could produce funds. He did not involve the board in that except to the extent that the—I remember, the board had passed on some sort of contract to pay for a mailing, and I remember at one time he reported that receipts—that is, the cost of fundraising was something like 20 percent.

Senator **Leahy**. Now I understand at one point the U.S. Department of Labor opened an investigation into the fund. They subpoenaed contribution records and other documents.

What was that case all about?

Mr. **Voorhees**. That was a case where the Labor Department issued an administrative subpoena to receive records of the contributors of the Fund for Individual Rights. We were told—the board members were told that that subpoena had been received, and that because of litigation in which a finding had been made by the other district courts, a finding that such a request could have a chilling effect on contributors, that the fund should resist that.

The board of directors approved that resistance, and it resulted in the subpoena being limited to a disclosure of only supervisory officials who were contributors.

The fund of course had been ready to comply with that subpoena, but it never was enforced in the end, and I might add, that from the very beginning, the message that the executive director gave to the directors was that the fund had offered to make its list of contributors available to any judge, any CPA firm, any magistrate agreeable to the Labor Department for inspection. So in other words, there was nothing to hide in that regard, and I think the main concern was contributors who may have had a connection with J.P. Stevens and Company, which was the company involved in the *Patterson* v. *NLRB* case, which the fund did assist.

So I would say that——

Senator **Leahy**. Well—I am sorry.

Mr. **Voorhees**. Well, I think just to conclude that, that there—it is my understanding, from the beginning, that there were no such contributors, and we were perfectly happy to allow the list to be viewed by an independent party to demonstrate that.

Senator **Hatch**. Senator, would you yield for a minute.

Senator **Leahy**. Sure.

Senator **Hatch**. I have to leave, but I think you are pretty close to being concluded.

Let me make a comment, that I appreciate, personally, your holding this early morning hearing, and I would volunteer to assist you by coming in early like this for future hearings, if we can get—you know—if we can dispose of all the rest of the pending nominations. I would be happy to. And I think this is a good thing that you are doing, and I appreciate it. I just want to express my regards for your holding this early morning hearing, and I would also like to express my regards for you, Mr. Voorhees.

Everything I know about you speaks very, very well of you, and your family, and I want to wish you the best, and I think we will get your name up and out, along with Mr. Gadola's, and hopefully, you will make a wonderful Federal judge.

We just appreciate your willingness to be able to do this.

Senator **Leahy**. Senator Hatch, I do appreciate you and Senator Thurmond dropping by for a while this morning.

Senator **Hatch**. Could I ask just one question, Mr. Chairman.

Senator **Leahy**. You can ask all the questions you want.

Senator **Hatch**. Well, I am just going to ask one of you. Do you know when the executive committee meeting would be scheduled for these two gentlemen, as well as others?

Senator **Leahy**. I am so far down——

Senator **Hatch**. Do you have any ideas?

Senator **Leahy**. I am so far down the seniority list on the Judiciary Committee, I do not have anything to do with that. I leave that to senior people like Senator Thurmond and Senator Kennedy.

Senator **Hatch**. Well, I hope that we can move these along because these are apparently very fine people, and there is no reason for any delays. It seems to me we can hold a weekly exec meeting——

Senator **Leahy**. Well, right now, with Mr. Gadola, we had that hearing here 8 days after we finally got the material from the Department of Justice.

Senator **Hatch**. I understand.

Senator **Leahy**. That is about as rapid as one can go.

Senator **Hatch**. Well, in the case of Mr. Voorhees, it has been almost a year.

Senator **Leahy**. Mr. Voorhees has taken longer.

Senator **Hatch**. Yes. It has taken quite long, and, you know, if we have real discrepancies or real problems, then I understand delays, but I think once this hearing is over we ought to have an executive meeting as soon as we can. I hope you will encourage your side to do that.

I will certainly encourage Senator Thurmond to cooperate in every way, as I am sure he will. But thank you. I am sorry but I need to get back to the office.

Mr. **Voorhees**. Thank you, Senator.

Senator **Hatch**. Thank you.

Senator **Leahy**. Now as I understand it, Mr. Voorhees, this Labor Department investigation was part of a larger investigation into certain groups that were opposing the unionization of the textile plants of the J.P. Stevens Company.

And I mention this because Federal law requires reporting of certain kinds of agreements between employers and outside consultants who are hired to help influence labor relations.

Now my understanding is that the fund was providing some legal assistance to J.P. Stevens employees who were opposed to unionization.

And the Labor Department wanted to know if Stevens' management, or perhaps other employers, were contributing to the fund for this purpose, and that could be the kind of contribution that has to be reported under Federal labor law.

Does that description sound about right to you?

Mr. **Voorhees**. I think that is correct. I would take issue, that ours was a—that is, the Fund was an organization which itself opposed unionization. It did represent plaintiffs which sought to decertify in that situation.

Senator **Leahy**. The reason I ask all of this: In June 1979, a fundraising letter went out on behalf of the Fund for Individual Rights.

The letter was signed by a Gene Patterson. I believe you had referred, earlier, to the Patterson case. He had worked at a J.P. Stevens plant. It talks about how Mr. Patterson and some of his fellow workers wanted to, quote, "have the union bosses thrown out," close quote, of the plant where they worked, in Roanoke Rapids, NC.

Let me read you a part of the letter. I will put the complete letter in the record. Incidentally, the heading on the letter just says "Gene Patterson, Roanoke Rapids, North Carolina."

It says:

> But legal research, court costs and attorneys fees are expensive, and we just did not have the money. That is when we turned to the North Carolina Fund for Individual Rights for help. The Fund for Individual Rights is a legal foundation that

helps little people like us protect our rights, and they were willing to spend every penny they had, over $36,000, to help us file a complaint in Federal court in Raleigh, so that we can vote the union bosses out.

[The full text of the letter follows:]

GENE PATTERSON
Roanoke Rapids, North Carolina

June 13, 1979

Dear Friend:

My name is Gene Patterson, and I work in a textile mill in Roanoke Rapids, North Carolina.

And George Meany's union bosses are trying to destroy my job in a vicious power grab to unionize every working American they can get their hands on.

Let me explain the whole problem to you and maybe you will want to help me today. I sure hope so.

The company I work for is called J.P. Stevens. We make Gullistan carpets and Utica sheets and table linen.

Our company is the second largest textile manufacturer in the United States. That's why the union bosses have been trying to unionize us...and then every other right-to-work industry.

Well, the union organizers finally got a toehold right here in Roanoke Rapids. They won a real close election to unionize our plant.

We didn't know what we were getting into when our people voted in the union; but we sure do now, because it didn't take the union bosses very long to sell us down the river.

First they turned our union local over to some union bosses in New York City -- a giant union called the ACTW. Then, they organized a nationwide boycott of the products we make, trying to put J.P. Stevens out of business!

When we saw that the union was willing to destroy our company and our jobs, we knew they were just using us to unionize other workers around the country; so a group of us started to fight back.

First thing we did was to start an Employee's Educational Committee to tell other J.P. Stevens workers the truth about the union boycott and how the union bosses sold us out.

And, when we'd gotten the support of 50% or more of all J.

P. Stevens workers, we tried to start legal action to have the union "decertified". That's a fancy term that means we are trying to have the union bosses thrown out.

But legal research, court costs, and attorney's fees are expensive; and we just didn't have the money. That's when we turned to the N. C. Fund for Individual Rights for help.

The Fund for Individual Rights is a legal foundation that helps little people like us protect our rights.

And they were willing to spend every penny they had, over $36,000 dollars, to help us file a complaint in Federal Court in Raleigh so we can vote the union bosses out.

But now that our case is in court, the legal expenses are just beginning. The Fund for Individual Rights must raise over $10,000 dollars for the legal research we need in the next few weeks alone.

I know we are the underdogs in this fight because we don't have the millions of dollars the union bosses do. One New York union boss has said the unions are willing to spend $10 to $12 million dollars to crush us. And maybe they can if we can't afford to continue our lawsuit to force a new election.

All I know is that we've got to stop their vicious power grab right now, because if the union bosses can destroy our jobs here in Roanoke Rapids...whose jobs will they destroy next?

If you can help us with a tax deductible contribution of $10, $15, $25, $50, $100 or even $250 or $500 or more, I can tell my wife Paula and all the other families who work at J.P. Stevens that we can beat the union bosses -- that we've got a chance.

Can I count on your contribution today? I sure hope so.

Please give us that chance.

Sincerely,

Gene

Gene Patterson
J.P. Stevens Employee

GP:s
Enclosure

P.S. Paula and I look forward to hearing from you soon.

Senator **Leahy**. And it goes on with the usual, send what you can, $25, $50, and so on.

Now, if that letter is accurate, it seems the Fund made a substantial commitment of resources to Mr. Patterson's case to try to decertify the union at J.P. Stevens.

Is that correct?

Mr. **Voorhees**. I am not familiar with that letter nor am I familiar with any matter presented to the board involving money of that magnitude. I do not know what the case cost. I know it was ultimately lost, and therefore, there were no fees received from the case.

The fund, to the extent that the Fund may have had money available to pay the attorney who handled the case, I do not know. I have stated that the fund often ran a deficit as far as its ability to pay counsel in cases like that.

Senator **Leahy**. Do you know whether Stevens, or its management, has ever contributed to the Fund?

Mr. **Voorhees**. It is my knowledge that it has not.

Senator **Leahy**. Now the Labor Department won out in the litigation over the subpoenas, but they never enforced the subpoenas, is that correct?

Mr. **Voorhees**. That is correct.

Senator **Leahy**. So they never inspected the Fund's records?

Mr. **Voorhees**. No. They did not.

Senator **Leahy**. And the case was closed some time in the early 1980s?

Mr. **Voorhees**. That would be correct.

Senator **Leahy**. Now during the time that you were director of the Fund, and when you were its vice president, did you have any personal involvement in the Labor Department investigation?

Mr. **Voorhees**. None whatsoever.

Senator **Leahy**. They never interviewed you, took your deposition, or anything like that?

Mr. **Voorhees**. No, sir.

Senator **Leahy**. Now let me turn to the second matter. You list in your questionnaire the case of *Uzzell* v. *Friday.*

Do you want to tell me a little about what that case was about?

Mr. **Voorhees**. Yes, sir. That was a case in which, some time in 1975, a group of students at the University of North Carolina approached the executive director of the Fund to seek assistance in resisting two provisions that involved student government. One was a provision that if a defendant were charged with a student body, or student code violation, that he, or she, had a right to require that his jury—which in that situation, you had, in a sense, a jury of seven judges—that a right to require that at least four of those judges be of the same race or sex as the defendant.

That provision was of course racially conscious on its face. Likewise, a provision whereby the president of the student body could appoint two members of the student council in the event that at least two minority persons were not elected to those offices.

So those were the two provisions that were objected to in the case, and those two objections were ultimately upheld by both the fourth circuit and the district court at trial.

I became involved in the case because at the time the Fund ceased actively functioning, this was one of the cases which was held over.

The executive director of the fund asked me to handle it for whatever further proceedings might be required. The case was on for trial and I took over the responsibility to try the case, and did so in the Middle District of North Carolina.

Senator **Leahy**. That was one of the biggest cases the Fund ever handled, was it not?

Mr. **Voorhees**. That was undoubtedly the major case that the fund handled.

Senator **Leahy**. And I see it went before the fourth circuit three times and before the Supreme Court once. That is——

Mr. **Voorhees**. That is correct.

Senator **Leahy**. A lot of paper, a lot of filings.

Mr. **Voorhees**. A vast amount of paperwork. It was certainly a good case from the standpoint of the advocate learning to try big cases with a lot of documents and a lot of varied claims, and numerous parties.

Senator **Leahy**. And the constitutional litigation, the reverse discrimination issues, and everything else, that is a lot different than the kind of practice you had in Gastonia, is it not?

Mr. **Voorhees**. Vastly different. Gaston County is a community of about 170,000 people at this point, and typical litigation there rarely gets into constitutional issues except in criminal cases where I have represented felons, or alleged felons, where you had search and seizure issues, and that kind of thing.

Senator **Leahy**. Now Joe Beard was involved in this case. Then when he became a Federal employee, he was disqualified from handling any matters in Federal court, including this case?

Mr. **Voorhees**. That is correct.

Senator **Leahy**. Did he ever, though, continue to advise you or give you help on that case?

Mr. **Voorhees**. I asked for his assistance in interpretation of some of the things that were involved in the case. That is, I think it would have been unfair to the plaintiffs to lose, altogether, his perspective on the case, and so, from time to time, I did consult with him about issues in the case.

He never received any pay for that.

Senator **Leahy**. You say from time to time. How often did you consult with him?

Mr. **Voorhees**. I would think maybe—during the period of that litigation, probably every month, something along that order.

Senator **Leahy**. And did he initiate calls to you with suggestions?

Mr. **Voorhees**. I do not recall that he did, although he may have called me on something that was of interest in the case.

Senator **Leahy**. Now this was during the time he was a Federal employee?

Mr. **Voorhees**. That is correct.

Senator **Leahy**. Now this is fairly significant. Let me ask you to think very carefully. Were there points during the appellate process, or any other part of the case, where Mr. Beard called you and suggested, or directed that you take certain kinds of action in the case?

Mr. **Voorhees**. I think I considered myself to be in control of the case and I do not recall him making anything that was directory about it.

Senator **Leahy**. Well, did you make any decisions on the case, or the steps that you would take, based on what Mr. Beard told you when you called him?

Mr. **Voorhees**. Well, I do not doubt that his input may have affected my decisions, but I do not—that is obvious. That is why I was asking for whatever it was he may have had to offer.

I would say this: That at the stage that litigation came to me, it was already thoroughly briefed at the Supreme Court level and at the fourth circuit level.

Consequently both through three-judge panels, and to the full panel of the fourth circuit. In addition, we had the *Bakke* case.

Senator **Leahy**. I was going to say, you had the *Bakke* case on your side at that point.

Mr. **Voorhees**. The *Bakke* case had been decided and the briefs that came to me were already addressed to *Bakke* issues. Consequently, there really was very little for Mr. Beard to add to the case, tactically or otherwise. It was strictly a question of law, and it was a matter—what I did was hone the briefs to suit my approach to the case, and that was it.

Senator **Leahy**. Did Mr. Beard ever edit or help write any of the documents after he became a Federal employee?

Mr. **Voorhees**. I would—I think he reviewed the documents. He may have pointed out a few things about them at that stage.

Senator **Leahy**. So he may have contributed to some of the documents?

Mr. **Voorhees**. That is correct. Of course I—whether he did that on his time or the Government's time, I assume it was his time.

Senator **Leahy**. I understand. How much time would you say he spent?

Mr. **Voorhees**. That he spent?

Senator **Leahy**. In answering your calls or reviewing documents or contributing to documents, or making suggestions about documents.

Mr. **Voorhees**. Probably spent—I would assume—something on the order of 10 to 30 hours.

Senator **Leahy**. Now one thing I should note about this case. You may be too modest to bring this out, but the Federal district judge evaluated your work in this case because of the attorney's fee award. The judge wrote that your work was of high quality and you achieved excellent results for the client. I just thought I would note that.

Mr. **Voorhees**. He did say that.

Senator **Leahy**. Anything else you would like to tell us about FIR that could be relevant to us here?

Mr. **Voorhees**. I think that is about the size of it.

Senator **Leahy**. Well, again, I should note that I appreciate the fact that Senator Thurmond was able to join us for a few minutes this morning, and Senator Hatch was able to come by. I am feeling awfully lonely without them here with their usual hard-hitting questions to the President's nominees. But I did appreciate the fact that prior to the hearing they announced that they were for you.

I will check with them, of course, to make sure whether they have any questions for the record, as I will with all other Senators. As I noted to Mr. Gadola, and will try to emphasize again for everybody, take a look at the transcript. We will try to get it back to you as quickly as we can, Mr. Voorhees. If you see anything on there, or if you find, in reading a question, you understood it differently, and want to change any answers—I do not know if there would be any—but please understand you are not bound to your answer till you see this transcript and sign off on the transcript. Of course those answers then do stand. But this is not an adversarial proceeding.

This is just collecting information for the Senate Judiciary Committee. And if you see something in there, or if the transcript suggests additional material that might be helpful to the committee, please feel free to add it on.

Mr. **Voorhees**. Thank you very much, Senator.

Senator **Leahy**. And I welcome, again, all these friends and family members. You certainly have a lovely family and must be very, very proud of them. I know how proud I would be if my two sons and daughter were here at a similar time with me.

I am delighted to see you here, and your other friends. I apologize for the weather. At this time of year you probably would have been happy to escape a little bit of the heat back home, but please take advantage of some of the things to see around Washington.

It is a beautiful city. There is so much importance and history to our whole country here, and I hope you get a chance to see some of that.

Mr. **Voorhees**. Thank you so much, Senator.

Senator **Leahy**. Thank you very much, sir.

[Whereupon, at 9:47 a.m., the committee was adjourned.]

PAUL V. GADOLA

Birth:	July 21, 1929	Flint, Michigan
Legal Residence:	Michigan	
Married:	Married	Falding B. Gadola 2 children
Education:	1947 - 1948	University of Michigan
	1948 - 1949	Flint Junior College A.A. degree
	1949 - 1951	Michigan State University A.B. degree
	1951 - 1953	University of Michigan Law School J.D. degree
Bar:	1953	Michigan
Military Service:	1953 - 1955	United States Army
Experience:	1955 - 1970	Hoffman & Rubenstein Associate
	1970 - 1976	Gadola, Gadola & Gadola Partner
	1976 - 1984	Sole practitioner
	1984 - present	Stipes, Stipes & Gadola
Office:	1410 Mott Foundation Building Flint, Michigan 48502 313 232-9133	
Home:	5143 Green Meadow Grand Blanc, MI 48439	

To be United States District Judge for the Eastern District of Michigan

ANSWERS OF PAUL V. GADOLA TO QUESTIONNAIRE FOR JUDICIAL NOMINEES

(The Questionnaire is attached and the Answers are in the same numerical sequence in order to avoid the necessity of restating each question in detail.)

I.

BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full Name: Paul Victor Gadola
(Prior to the death of my father former name used was Paul Victor Gadola, Jr.)

2. Address: Residence: 5143 Green Meadows, Grand Blanc, MI 48439
Business: 1410 Mott Foundation Bldg.,Flint, MI 48502

3. Date and Place of Birth: Flint, Michigan July 21, 1929

4. Marital Status: I am married to Falding B. Gadola.
My wife's occupation: Housewife
My wife is not employed outside of the home.

5. Education:

	Degree
A. University of Michigan, Ann Arbor, Michigan September 1947-June 1948	
B. Flint Junior College (now known as Mott Community College) Flint, Michigan June 1948-August 1949	Associate in Arts
C. Michigan State University, East Lansing, Michigan September 1949-June 1951	A.B.
D. University of Michigan Law School Ann Arbor, Michigan June 1951-August 1953	Juris Doctor

6. Employment Record: U.S. Army November 1953-September 1955
Law firm of Hoffman & Rubenstein, September 1955-January 1960, Flint, Michigan
Since January 1960 I have been self-employed as a practicing attorney in Flint, Michigan.

7. Military Service: U.S. Army November 1953-September 1955
(Finance Corps)
Rank:P.F.C.
Serial Number: US 55441379
Received honorable discharge

8. Honors and Awards: Named to membership in Phi Kappa Phi National Honor Society, Michigan State University 1951

9. Bar Associations:
Member of State Bar of Michigan
Member of American Bar Association
Member of Genesee County (Michigan) Bar Association
Member of American Trial Lawyers Association
Member of Michigan Trial Lawyers Association
Fellow, American Trial Lawyers Founcation
Diplomate, National Board of Trial Advocacy
Past Director and Vice President of Genesee County Legal Aid Society
Past member of Board of Directors of Genesee County Bar Association
Arbitrator, American Arbitration Association 1971 to present
Mediator, Circuit Court for the 7th Judicial District of Michigan, Approximately 1982-Present

10. Other Memberships in organizations that are active in lobbying before public bodies:

American Association of Community and Junior Colleges
Michigan Community College Association

Other Memberships:
Old Newsboys
University Club of Flint
Michigan State University Alumni Association
University of Michigan Alumni Association

11. Court Admission:

Court	Date of Admission
All Courts of the State of Michigan:	December 1953
United States District Court for the Eastern District of Michigan:	December 1953
United States Court of Appeals for the Sixth Circuit:	December 29, 198
United States Supreme Court:	January 9, 1984

12. Published Writings: None

13. Health: Excellent - Date of Last Physical Examination: January 1987

14. Judicial Office: None

15. Citations: Not applicable.

16. Public Office: Public Offices Held:

Elected to Board of Trustees of Mott Community College, Genesee County, Michigan 1969

Re-Elected to Board of Trustees of Mott Community College, Genesee County, Michigan 1973

Re-Elected to Board of Trustees of Mott Community College, Genesee County, Michigan 1979

Re-Elected to Board of Trustees of Mott Community College, Genesee County, Michigan 1985

Unsuccessful Candidacies:

Candidate for Prosecuting Attorney of Genesee County, Michigan 1956

Candidate for State Senator, 1966

Candidate for Board of Trustees of Michigan State University, 1974

Candidate for Board of Trustees of Michigan State University, 1976

Candidate for Board of Trustees of Michigan State University, 1980

17. Legal Career: Chronology of Law Practice:

1. I have not served as clerk to a judge.
2. I have, except for the years 1955-1960, been a sole practitioner, although I have been in association with other attorneys, but not in partnership or in a professional corporation.

   From September 1955 until January 1960 I was with the law firm of Hoffman & Rubenstein, Flint, Michigan.

From January 1960 until June 1968 I practiced in association with Retired Circuit Court Judge Paul V. Gadola, my father and with Thomas L. Gadola, my brother in Flint, Michigan.

From June 1968, when my father died I practiced in association with Thomas L. Gadola and Edwin Rabin in Flint, Michigan until January of 1977.

From January of 1977, when my brother became a Probate Judge, I opened and operated an office by myself in Flint, Michigan until March 1, 1983.

Since March 1, 1983 I have practiced at my present business address in association with Attorneys Reese W. Stipes and Thomas C. Stipes,

B. 1. The character of my law practice has been as a general practitioner.

While I was with Hoffman & Rubenstein (1955-1960) I handled a good many automobile accident defense matters for Liberty Mutual Insurance Company, Auto-Owners Insurance Company and also handled defense of claims against several life insurance and health and accident insurance companies, including Metropolitan Life Insurance Company, Prudential Insurance Company, John Hancock Life Insurance Company and Bankers Life and Casualty Insurance Company.

Since 1960 my practice has been of a more general nature, with emphasis on litigation, including personal injury and wrongful death matters, dramshop cases, domestic relations and child custody litigation, contract disputes and various other types of litigation

2. Typical business clients:

Kraft Engineering, Inc.
Kraft Surveying, Inc.
Atlas Floogle Co., Inc. (a restaurant corporation)
Slenderalla Health Spas, Inc.
F. Robert Edwards, real estate broker
D & P Steakhouse, Inc.

My clientele basically consists of individuals whom I have represented, and am representing, in personal injury and wrongful death matters, dramshop cases, domestic relations and child custody litigation, contract disputes and various other types of litigation.

C. 1. I appear in court on a frequent basis. The frequency of my court appearances has steadily increased during the past ten years, although even prior to that time my appearances were frequent.

2. Percentage of court appearances:

(a) Federal Courts: negligible
(b) State Courts of Records: Almost 100%
(c) Other Courts: negligible

3. Percentage of litigation which was:

(a) Civil: 95%
(b) Criminal: 5%

4. Number of cases in courts of record tried to verdict on judgment: Approximately 150 (this is an estimate). I acted as sole counsel in virtually all of these cases.

5. Percentage of Trials was:

(a) Jury: 10% (estimated)
(b) Non-Jury: 90% (estimated)

18. Litigation: 1. In the Matter of the Estate of Kamel Gantos, Deceased
Genesee County Probate Court Case No. 98616
Honorable Harold B. Resteiner, Probate Judge
Dates of Representation: 1979-1982

Summary of Case:

This was an action in which certain heirs at law of Kamel Gantos, Deceased, sought to contest the Will of Mr. Gantos and also to set aside certain transfers of real estate and other assets during his lifetime.

The undersigned represented Kamley Gantos, the elderly sister of Kamel Gantos, who was the principal beneficiary under his Will and was also the recipient of various inter vivos transfers of assets which he accomplished prior to his death. The assets involved were of very substantial value. (My co-counsel was M. Bushnell Trembley, 1121 Church Street, Flint, Michigan (313) 232-5166 .

I was lead attorney and trial attorney in this matter.

Counsel for adverse parties:

Anthony J. Mansour
Attorney at Law
1000 Beach Street
Flint, MI 48502
(313) 233-0484

Michael H. James
Attorney at Law
307 E. Court Street
Flint, MI 48502
(313) 232-0175

Michael J. Smith
Attorney at Law
Beechhill Center, 3200 Beecher Road
Flint, MI 48504
(313) 733-1000

Jury trial was conducted from September 9th, 1981 to September 21st, 1981.

The verdict upheld the validity of the Will and the validity of the various inter vivos transfers to Kamley Gantos.

The case was significant in that it involved such matters as:

1) The alleged undue influence of Kamley Gantos upon Kamel Gantos.
2) The issue of mental competence of Kamel Gantos.

3) The issue of the effect of administration of certain medication to Kamel Gantos, and the time of administration of that medication to him on the date on which he both executed the Will and underwent major surgery.

4) The legal effect of the presumption of undue influence upon Kamel Gantos by Kamley Gantos, by reason of the transfer to her of assets at a time in which she was in a fiduciary relationship to him.

All these issues were resolved by the jury in favor of Kamley Gantos the beneficiary under the Will and the beneficiary under the inter vivos transfers.

2. Henry Lang vs J. D. Smith and Ina M. Smith, his wife
Genesee County Circuit Court Case No. 82-61860-CH
Michigan Court of Appeals Docket Nos. 78377 and 79279
Honorable Thomas C. Yeotis, Circuit Judge
Dates of Representation: 1980 - 1985

The undersigned was the attorney for Plaintiff-Appellee in the above matter.

Charles R. Cole, 1030 South Grand Traverse Street Flint, Michigan (now deceased) was the attorney for the Defendant-Appellants.

Date of trial was July 26, 1983 with various post-judgment proceedings thereafter in both the Trial Court (Genesee County Circuit Court) and the Michigan Court of Appeals.

Summary of Case:

In this matter Plaintiff sold certain premises, land and a cocktail lounge building, and the business located thereon to Defendants. A fire occurred which destroyed the building and business and the Defendants received the fire insurance proceeds under an agreement by which they were to rebuild and again make land contract payments to Plaintiff. Defendants however retained the fire insurance proceeds, failed to rebuild, sold their licenses for the sale of alcoholic beverages, defaulted under the land contract and abandoned the premises.

Since the land contract did not contain an acceleration clause, Defendants claimed that Plaintiff's only remedy was to forfeit the contract and recover the premises, which then consisted only of vacant land and a demolished building. Plaintiff maintained that, despite the fact that there was no acceleration clause in the contract, he was not confined to forfeiture but could instead foreclose, as in the case of a mortgage, and obtain a deficiency judgment against Defendants after a Sheriff's Sale.

The principal issues involved, all of which were resolved by the Trial Court, in favor of Plaintiff, were the following:

1) May the balance due on a land contract be accelerated in the absence of an acceleration clause, under the theory of anticipatory breach, when the vendes have renounced and repudiated their contractual obligation? (This is a matter of first impression in Michigan).

2) May the foreclosure sale by the Sheriff be set aside when the only bidder was the Plaintiff, on the basis that the amount received was inadequate?

3) Are the Defendants, husband and wife, liable both jointly and severally, and can their separate estates be reached to satisfy the deficiency judgment? (Defendants were divorced subsequent to their default but prior to trial of the matter).

As stated, all issues were resolved in favor of Plaintiff.

3. Earl J. Bray et al vs City of Swartz Creek
Genesee County Circuit Court Case No. 80-58993-CZ
Honorable Thomas C. Yeotis, Circuit Judge
Dates of Representation: 1980-1983

The undersigned was co-counsel in this matter. Co-counsel with the undersigned was: Thomas C. Stipes, Attorney at Law, 1410 Mott Foundation Bldg., Flint, Michigan (313) 232-5133.

Defendant City of Swartz Creek was represented by:
Edward P. Joseph, Attorney at Law, 727 So. Grand
Traverse St., Flint, MI 48502 (313) 239-3165.

Summary of Case:

The City OF Swartz Creek enacted an ordinance requiring all property owners, both residential and commercial, to connect to the City sewer system with tap-in fees to be paid. If, however, a home or commercial facility had been constructed prior to the date of enactment of the ordinance, such premises would not be subject to the tap-in fee requirement, despite the fact that all property owners connected to the sewer system subsequent to enactment of the ordinance.

The principal issues, all of which were resolved in favor of the Plaintiffs, were as follows:

1) Should the action by Plaintiff be certified as a class action on behalf of all property owners who had paid the tap-in fees?

2) Was the ordinance unconstitutional as a denial of equal protection of the laws?

3) Was the City entitled to rely upon settlements previously made with many property owners and releases obtained from them prior to institution of the class action, on a theory of res judicata or collateral estoppel, or were the releases and settlements void as being contrary to public policy and being without consideration?

4) Was the City required to repay not only the tap-in fees collected and interest thereon, but also the City's actual investment income earned at the highest possible rate during the time it held the tap-in fees?

All these issues were resolved in favor of Plaintiffs and a judgment in excess of $540,000.00 was collected in June of 1983.

4. Selden Ring vs Union Lake Associates, et al
United States District Court
Eastern District of Michigan - Southern Division
Case No. 76-40128
Honorable James Harvey, District Judge
Dates of Representation: 1979 - 1981

The undersigned was counsel for Defendants.

Plaintiffs were represented by:

Sharon M. Woods
Barris, Sott, Denn & Driker
21st Floor First Federal Building
Detroit, MI 48226
(313) 965-9725
-And-
Daniel M. Share
Barris, Sott, Denn & Driker
21st Floor First Federal Building
Detroit, MI 48226
(313) 965-9725

This was an action by which Plaintiff, a Beverly Hills, California real estate developer sought specific performance of an agreement for the purchase from Defendants of two shopping centers in Michigan.

Trial of the matter commenced December 3, 1980 in the United States District Court, Bay City, Michigan and concluded February 13, 1981. On the final day of trial a settlement was reached on terms favorable to the Defendants.

Among the many issues involved in this very complex litigation were the following:

1) Was the contract between the parties void for lack of mutuality of obligation?

2) Was the contract unenforceable due to a lack of the "meeting of the minds" of the parties on the meaning of certain fundamental provisions of the agreement?

3) Were there such variances in the acceptance of an offer from the terms of the offer as to constitute a rejection of the original offer and to be, instead, a counter-offer?

4) Was the agreement between the parties, a portion of which was oral, void under the statute of frauds?

5) Did the parol evidence rule bar certain evidence of Plaintiff as to alleged acceptance of the offer?

5. Earl D. Bill, Individually and as Administrator of the Estate of Christie M. Bill, Deceased vs Estate of Frank Robert Hutchins, Deceased and Tyrone Hills Country Club, Inc.
Genesee County Circuit Court File No. 75-357888-NS
Honorable Earl E. Borradaile
Dates of Representation: 1973-1983

The undersigned was Plaintiff's counsel.

The various Defendants were represented by:

David S. Magee
Milliken, Magee & Yuille
1120 Beach Street
Flint, MI 48502
(313) 234-0686

Lawrence E. Nill
Nill, Kirby, Rockwell & Swan
G-4413 Corunna Road
Flint, MI 48504
(313) 732-3320

Ivor R. Jones
Attorney at Law
905 Oak Street
Flint, MI 48503
(313) 235-4643

Summary of case:

This was a dram shop action brought by the father of a teenage girl who died as the result of injuries which she suffered when a car in which she was riding was struck by a car being driven by Mr. Hutchins, who was a bartender at Tyrone Hills Country Club, and who was killed in the collision.

A recovery to the maximum extent of Defendant's insurance coverage resulted.

Among the issues in this interesting litigation were the following:

1) Where the dram shop statute requires that there be a showing that the bar served a visibly intoxicated person, and where there is no such testimony that Hutchins was visibly intoxicated, is the statute

applicable where the bartender, as agent of the bar, was serving himself as a customer of the bar?

2) Can the blood sample drawn from the corpse of the bartender be admitted into evidence to establish his intoxication?

3) Can the time clock cards of the bar be introduced to establish that the bartender necessarily was drinking on the job and serving liquor to himself, there being no sufficient interval between his departure from work and the time of the accident to have permitted him to have been served excessive alcohol elsewhere?

6. Earl D. Bill, Individually and as Administrator of the Estate of Christie M. Bill, Deceased vs Allstate Insurance Company
Livingston County, Michigan Circuit Court
File No. 77-3444-NI
Michigan Court of Appeals Docket Nos. 53884-53885
Honorable Stanley J. LaTreille, Circuit Judge
Citation in Michigan Court of Appeals: 109 Mich App 124(19
Dates of Representation: 1973-1983

The undersigned represented the Plaintiff in this litigati

The Defendant was represented by:

William L. Mackay
Attorney at Law
Dart Management Building
Mason, MI 48854
(517) 676-5137

Summary of Case:

Plaintiff's daughter was killed in an automobile collision with an uninsured motorist, while she was a passenger in her boyfriend's automobile.

After recovery of the maximum uninsured motorist coverage proceeds from the insurer of the boyfriend's automobile, the father made claim against his own insurer, Allstate Insurance Company.

Allstate maintained that Plaintiff was entitled to arbitrate the issue of damages, but that those damages were limited to $20,000.00 under Plaintiff's policy of insurance. Plaintiff maintained that since he owned five automobiles, all insured under the same policy of insurance, with separate certificates for each car, the maximum uninsured motorist coverage was $100,000.00 with Plaintiff being entitled to "stack" the insurance coverage.

The Trial Court on September 9, 1980 ruled in favor of Allstate, holding that the maximum recovery was only $20,000.00. Plaintiff appealed and the Michigan Court of Appeals reversed on September 8th, 1981 (Bill v Allstate, 109 Mich App 124 (1981)) holding that the coverage could be "stacked" and was a maximum of $100,000.00. The matter was then remanded to the Trial Court which ordered that the matter be submitted to arbitration. The matter proceeded to arbitration and upon the arbitration hearing Plaintiff was awarded damages of $100,000.00. The matter was subsequently referred back to the Trial Court on Plaintiff's claim that interest was due, and Plaintiff eventually recovered not only the $100,000.00 but also interest of $76,000.00.

7. Maxine Wilson vs Dearing Builders, Inc., Jeff C. Dearing and Martin G. Andrews
Genesee County Circuit Court Case No. 79-53011-NZ
Honorable Judith A. Fullerton, Circuit Judge.
Dates of Representation: 1980-1983

The undersigned represented the Defendants in the above matter which was tried to a jury.

Plaintiff was represented by:

Thomas L. E. Stanley
Waterman, Stanley, Spinks & Collier-Nix
91 No. Saginaw, Box 3391
Pontiac, Michigan 48059
(313) 858-2434

Summary of Case:

This litigation involved a suit in which Plaintiff the purchaser of a home, claimed breach of warranty, breach of contract, fraud and misrepresentation, and negligent workmanship against the corporate Defendant and the individual Defendants.

The corporate Defendant was defunct at the time of trial and the actual issue involved in this litigation concerned the liability of the individual defendants.

A direct verdict in favor of the individual defendants was granted by the court on April 22, 1983.

8. City of Rhinelander, Wisconson vs Super Excavators, Inc. vs Kraft Engineering Co., Inc.
Oneida County Circuit Court (Wisconsin) Case No. 7785
Honorable Ronald D. Keberle, Circuit Judge
Dates of Representation: 1975-1978

The undersigned represented Kraft Engineering, Inc. in the above matter.

The City of Rhinelander was represented by:

Richard E. Sommer
Sommer & Schroeder
40 W. Davenport
Rhinelander, Wisconsin
(715) 362-5157

-And-

James A. Johnson
Attorney at Law
8-A W. Davenport
Rhinelander, Wisconsin
(715) 369-4880

Super Excavators was represented by:

Mark M. Camp
Pfannerstill, Camp & Henderson
7610 W. State Street
Wauwatosa, Wisconsin 53213
(414) 771-1220

Employees Mutual Insurance Company of Wisconsin was represented by:

Rodney A. Charnholm
Attorney at Law
2000 Westwood Drive
Wausau, Wisconsin 54401

Summary of Case:

Kraft Engineering designed the sewer and water distribution system for the City of Rhinelander.

The system was constructed for the City by Super Excavators, Inc.

The system failed massively resulting in a multi-million dollar suit by the City of Rhinelander against Super Excavators. Super Excavators in turn brought a third party action against Kraft, claiming that the design and specifications for the project were defective.

Following lengthy and complex discovery proceedings, including a large number of experts, the matter came on for trial commencing in March of 1976, with the final judgment being entered on March 21, 1978.

By the terms of the judgment all claims against Kraft Engineering were dismissed on the merits.

This case involved extremely interesting and complex issues regarding the design and specifications for a sewer system, the construction methods employed in building the system, and the materials, particularly the fill materials, utilized by the contractor. There were many expert witnesses, primarily engineers, since the issues in the case primarily turned upon the opinions of the experts.

9. Glora Awad, Now Gloria Abbud vs Awads Party Store
Genesee County Circuit Court Case No. 84-74878-NO
Honorable Judith A. Fullerton, Circuit Judge
Dates of Representation: 1983-1985

The undersigned represented Plaintiff in the above matter.

The Defendant was represented by:

Robert B. Tatham
Donald J. Morbach & Associates
1120 Ford Building
Detroit, MI 48226
(313) 964-1146

Summary of Case:

Trial of this matter was concluded on August 14, 1985. The jury awarded a substantial verdict to Plaintiff, who was an employee of the store but who maintained that at the time of her injuries she was not functioning as an employee but was rather a business invitee upon the premises.

This was a slip and fall case involving an allegedly wet and slick terrazo floor, mopped during regular business hours and with no warning signs or barricades being in place.

Issues also involved the extent of Plaintiff's injuries from a medical standpoint and the matter of her contributory negligence, Michigan following the pure comparative negligence theory.

The jury resolved all issues in favor of the Plaintiff, finding negligence on the part of the Defendants and its agents no contributory negligence on the part of Plaintiff and returned a substantial verdict for the Plaintiff.

10. Ursula Ida Margarete Brown vs Douglas Dandeau Brown
    Genesee County Circuit Court Case No. 126633
    Honorable Robert M. Ransom, Circuit Judge
    Dates of Representation: 1978-1981

The undersigned represented the Plaintiff, a native of Germany in the above domestic relations matter.

The Defendant, a psychologist, was represented by:

Peter Anastor
Attorney at Law
703 So. Grand Traverse
Flint, MI 48502
(313) 767-2810

Summary of Case:

Trial of this matter commenced July 10, 1981 and was ultimately concluded on September 3, 1981, with intervening intervals.

The case involved facts and issues of unusual complexity for a divorce proceeding , including such items as:

1) The flight of Plaintiff to avoid an onrushing Russian Army in Germany in 1945.

2) The smuggling of gold and other valuables out of central Europe and into England by the Plaintiff, with the valuables sewed into her clothing, and the clothing of her mother.

3) The maintenance of various Swiss bank accounts.

4) The issue of Plaintiff's contribution to the education of her husband as a psychologist.

5) Allegations of a belief by the husband in witchcraft and the occult, which figures heavily in the child custody and the visitation dispute between the parties.

This was an extremely hard fought and difficult domestic relations action, involving many issues of a rather intriguing and fascinating nature.

At the close of proofs, the court awarded to Plaintiff virtually all of the assets of the parties and substantial permanent alimony and child support.

19. Legal Activities

I have recently been involved in significant litigation in Genesee County Circuit Court (Donald J. B. Feeley vs JoLinda Ann Richardson, Genesee County Circuit Court Case No. 86-88838-DP) which has not proceeded to trial. In that case I won a significant ruling, on behalf of the mother of a child born out-of-wedlock, that the Courts of Michigan did not have jurisdiction, on the issue of custody of the child, under the provisions of the Uniform Child Custody Jurisdiction Act as interpreted by the Court.

I am currently representing the estate of a deceased in a wrongful death action in Genesee County Circuit Court, (Linda L. Kellerman, Personal Representative of the Estate of Robert L. Kellerman, Deceased -vs- Dennis Michael Wright, Mary Hatton, Paul Winston Calhoun, Autobrite Collision, Inc. and Pete Alumbaugh, Inc. -And- Pete Alumbaugh, Inc. vs Autobrite

Collision, Inc. and Paul Winston Calhoun, Genesee County Circuit Court Case No. 84-74351-NI) and in that case I have won a ruling from the Court holding that an automobile rental agency is responsible for the negligent operation of its automobile by the minor son of the lessee of the automobile, even though the lease specifically forbade the lessee from allowing that individual or any minor from operating the vehicle.

Some years ago I successfully established, as a precedent, a valid procedure by which a child could be adopted by the husband of the child's mother, without the consent of the natural father who has failed to support the child. Prior to that time a procedure had been utilized by the Genesee County Probate Court which was of dubious validity.

I have been active in the incorporation of a number of local businesses, which of course does not involve litigation.

I have also served as legal counsel for various charitable and public service organizations, such as the Old Newsboys, Cystic Fibrosis Research Foundation and the Flint Environmental Action Team, Inc.

I served as legal counsel in the organization and incorporation of the Flint Environmental Action Team, Inc. and obtained the tax-exempt status ruling from the Internal Revenue Service regarding that non-profit corporation.

II.

FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Since I will entirely terminate my law practice, I will have no financial arrangements, stock options, deferred compensation agreements, future benefits or continuing relationships with customers, except for the collection of fees owed to me by clients for services previously performed.

2. Answer to Question 2:

   I do not foresee having any conflicts of interest regarding my law practice since I will be entirely terminating my law practice. I will, of course, terminate any and all political positions to avoid any conflicts of interest in that regard. I will scrupulously observe the Cannons of Judicial Ethics with regard to conflicts of interest and all other matters. If any appropriate question should arise as to whether I might have a conflict of interest in particular litigation, it would be my position that I should disqualify myself in order to avoid even the appearance of a conflict of interest.

3. Answer to Question 3: No.

4. Answer to Question 4:

   I was a candidate for Prosecuting Attorney of Genesee County, Michigan in 1956. In 1966 I was a Candidate for State Senator and in 1974, 196 and 1980 was a candidate for the Board of Trustees for Michigan State University.

   I have served as Chairman of the 7th Congressional District Republican Committe since 1981 and in 1984 I was Chairman of the Michigan Reagan/Bush '84 Committee.

5. Answer to Question 5:

   I am not a member of a law firm, being a sole practitioner and there are therefore no arrangements to be made to dissolve any financial interest in any law firm.

   Insofar as pending litigation is concerned, those matters will be referred to other counsel, and my compensation will be limited to fees earned for services performed prior to referral of the matter. Those matters will be the subject of agreement among myself, the client and the attorney to whom the matter and file are referred, in each specific instance involving pending litigation or other uncompleted legal business.

5. Answer to Question 5:

My financial net worth statement, in detail, is attached hereto.

FINANCIAL STATEMENT

NET WORTH

Paul V. + Felding Badola

4-30-87

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	112	875	
U.S. Government securities—add schedule	2	000	
Listed securities—add schedule	976	143	
Unlisted securities—add schedule	326	397	
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	223	000	
Real estate mortgages receivable	36	300	
Autos and other personal property	45	200	
Cash value—life insurance	15	265	
Other assets—itemize:			
(See Attached)	540	656	
Total assets	2 276	836	

LIABILITIES			
Notes payable to banks—secured			
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax	38	869	
Other unpaid tax and interest			
Real estate mortgages payable—add schedule	57	000	
Chattel mortgages and other liens payable - General Motors	2	900	
Other debts—itemize:			
Total liabilities	98	769	
Net worth	2178	067	
Total liabilities and net worth	2276	836	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	Mortgage on Residence		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

SUPPORTING STATEMENT

Name Paul V. & Falding Badola

Address 5143 Green Meadow

Grand Blanc, MI 48439

Social Security or Identification No.

Year Ended 4-30 19 87

As of

Assets - Listed Securities	
Citizens Bank - Common	7 052
Consumers Pwr - Common	264
Atlantic Richfield - Common	7 375
Comerica - Common	56 000
1st of America Corp	48 000
1st of America - 9% Pfd	56 000
1st of America - 10% Pfd	98 000
General Motors - Common	37 813
General Motors - E	3 725
General Motors - H	2 150
IBM	43 472
NBD - Bancorp	178 125
Arizona Health Fac Auth Hosp Rev Bd	33 625
Detroit Bld Auth Bd	52 975
Mich Hosp Fin Auth - Sinai Hosp Bd	29,531
Royal Oak, MI - Auto Parking Sys Rev Bds	54 000
Saginaw, MI - Water Rev Bond	26 154
Univ of Mich - Univ. Hosp Rev Bd	29 937
Washington Public Power Supply Sys Rev Bd	87 962
Wayne Cty, MI - Downriver Sys Sewer Disposal	21 825
Limited Term Muni Fund	51 506
MFS Muni Income Fund	25 625
Wayne Cty, MI Ecorse Drainage	25 625
Total	976 143

Assets - Unlisted Securities	
Metro Fed Svgs Bank	155 025
Duff & Phelps	25 937
Metro Fed Svgs Bank	64 935
Salant Corporation	80 500
Total	326 397

Real Estate Owned	
Residence - 5143 Green Meadow, Grand Blanc, MI	200 000
Genesee Township Land	23 000
Total	223 000

SUPPORTING STATEMENT

Name Paul V. & Falding Gadola

Address 5143 Green Meadow

Grand Blanc, MI 48439

Social Security or Identification No.

Year Ended 4-30 1987

As of

Other Assets		
Office Equipm – Paul V. Gadola Law Practice	5 000	
IRA Investment – Sun Life	10 249	
Mass. Mutual Life Ins Co. Variable Annuity	79 500	
Consolidated Capital Properties – Limited Partnership	5 092	
GRS Associates – Limited Partnership	8 957	
Weaver Settlement	16 593	
Weaver Drilling – Partnership	6 978	
Southwest Realty – Partnership	10 500	
Russell S. Bishop Trust	364 986	
Mary A. Bishop Trust	32 801	
Total	540 656	

Real Estate Mortgage Pay		
Old Kent Bank – Residence, 5143 Green Meadow, Grand Blanc, MI		57000

DUPUIS & RYDEN

III.

GENERAL (PUBLIC)

1. Answer to Question 1:

It is my general view that the concentration of the judiciary should primarily be upon the resolution of disputes between litigants rather than upon general problem-solution.

I believe the courts, and especially the trial courts, should be quite circumspect in the use of an individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals. Such is not, in my estimation, a primary function of a trial court, which is bound by precedent, but is rather a function of appellate courts or, most importantly, a legislative function under our doctrine of separation of powers. In other words, I believe a trial court should confine itself to a great degree to the interpretation of existing laws, based, to a great degree, on legal precedents, rather than conducting itself in an activist manner and thereby infringing upon the legislative functions. Trial judges are not elected and therefore do not have the people's mandate to engage actively in the legislative process.

Neither do I believe that the judiciary should indulge in the tendency to impose broad, affirmative duties upon governments and society. Rather, the courts should be primarily involved in the resolution of disputes between litigants and in the protection and preservation of the rights and liberties of those litigants who come before the court.

Jurisdictional requirements should, in my estimation, be rather strictly observed.

The judiciary should, to the extent possible, avoid imposing itself upon other institutions in the manner of an administrator with continuing oversight responsibilities. The courts are not well equipped to assume or to perform such administrative responsibilities.

Judicial review depends upon veneration of the Constitution, which as the basic charter of our form of government authorizes experts in the law to review popular legislation for its consistency with the declaratory law. The judge's task, as I see it, is not to create law or to exercise their policy preferences but rather to interpret and defend the Constitution that the people revered, and by preserving its justice, to render it worthy of continued reverence.

The Constitution is and should be an embodiment of an essential and unchanging justice. As Professor Edward S. Corwin said some sixty years ago:

> "There are...certain principles of right and justice which are entitled to prevail of their own intrinsic excellence, altogether regardless of the attitude of those who wield the physical resources of the community. Such principles were made by no human hands; indeed, if they did not antedate deity itself, they still so express its nature as to bind and control it. They are external to all Will as such and interpenetrate all Reason as such. They are eternal and immutable. In relation to such principles, human laws are, when entitled to obedience save as to matters indifferent, merely a record or transcript, and their enactment an act not of will or power but one of discovery and declaration."

2. Answer to Question 2:

Actions in my professional and personal life evidencing my concern for equal justice under the law:

(a) I have served as President of the Urban League of Flint, an organization devoted to the protection and advancement of the rights and economic interests of minorities.

(b) I was a leader in the drive for enactment of an open housing ordinance in the City of Flint in the 1960's. This ordinance was the first open housing ordinance adopted by public referendum, in the United States, after the City Council had refused to adopt such legislation. I also acted as attorney for the supporters of the ordinance in their successful litigation in which they won the rights of public assembly on the grounds of the City Hall to promote the cause of the open housing ordinance.

(c) I have previously served as a member of the Board of Directors of the Greater Flint Chapter of the National Association for the Advancement of Colored People.

(d) I have served as Vice President and as a member of the Board of Directors of the Genesee County Legal Aid Society, which provided free legal service to poor people.

(e) I served as attorney for a group of citizens which was improperly denied use of a public facility by the City Council of Flint, Michigan to conduct a meeting protesting U. S. involvement in the Vietnam war. Although the trial court ruled with the city, I obtained a reversal of that decision on an emergency appeal to the Michigan Court of Appeals.

(f) As Chairman of the Board of Trustees of Mott Community College for the past four years, and as an elected member of the Board of Trustees of that college since 1969, I have consistently supported the policy of open admissions to all, and for a policy of pursuing the employment of minorities on the faculty and staff of that urban college.

(g) I have, as a member of the Genesee County Legal Aid Society, furnished pro bono services to persons who were indigent or of limited means. Additionally, I continue this practice individually when persons who are indigent appeal to me for legal assistance. Also, in the litigation referred to in (b) and (f) above, I provided extensive pro bono services to groups of citizens whose rights had been denied by governmental authorities.

(h) I have been a consistent supporter and advocate for civil rights causes in my community.

(i) I was a founding member, a member of the original board of directors and legal counsel for the Flint Environmental Action Team, Inc. which has crusaded for a healthier, pollution-free and beautiful environment for all citizens.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

2. Address: List current place of residence and office address(es).

3. Date and place of birth.

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong (such as civic, educational "public interest" law, etc.).

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written. Please supply a copy of any significant speech by you on constitutional law or national policy. If there were press reports about the speech, and they are readily available to you, please supply them.

13. Health: What is the present state of your health? List the date of your last physical examination.

14. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

17. Legal Career:

    a. Describe chronologically your law practice and experience after graduation from law school including:

        1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

        2. whether you practiced alone, and if so, the addresses and dates;

        3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

    b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

       2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

    c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

2. What percentage of these appearances was in:
    (a) federal courts;
    (b) state courts of record;
    (c) other courts.

3. What percentage of your litigation was:
    (a) civil;
    (b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

5. What percentage of these trials was:
    (a) jury;
    (b) non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. Describe all financial arrangements, stock options, deferred compensation agreements, future benefits, and other continuing relationships with business associates, clients or customers.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

4. Have you ever held a major position or played a major role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

5. If applicable, please describe the arrangements you have made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation?

6. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

   (a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;

   (b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

   (c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

   (d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

   (e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

2. What actions in your professional and personal life evidence your concern for equal justice under the law? Describe what you have done to provide pro bono legal representation to the disadvantaged.

ANSWERS OF PAUL V. GADOLA, NOMINEE TO THE POSITION OF UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, TO THE REVISED QUESTIONNAIRE FOR JUDICIAL NOMINEES

(IN ACCORDANCE WITH THE COMMITTEE'S INSTRUCTIONS, ONLY THE UNDERLINED PORTIONS OF THE REVISED QUESTIONNAIRE HAVE BEEN ANSWERED HEREIN. MR. GADOLA ALSO INCORPORATES HEREIN HIS ANSWERS TO THE ORIGINAL QUESTIONNAIRE, WHICH ANSWERS WERE SUBMITTED UNDER DATE OF MAY 26, 1987)

I.

BIOGRAPHICAL INFORMATION (PUBLIC)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

There have been no lapses in my admission to practice in any of the listed courts.

12. Published Writings: List the titles, publishers and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not edited any books, articles, reports or other published materials.

I have not delivered any speeches on issues involving constitutional law or legal policy.

III.

GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

What I have done to fulfill my responsibility, under Canon 2 of the American Bar Association's Code of Professional Responsibility, to participate in serving the disadvantaged:

(a) I have served as President of the Urban League of Flint, an organization devoted to the protection and advancement of the rights and economic interests of minorities. I served in this capacity for two years and as a board member for several additional years.

(b) I was a leader in the drive for enactment of an open housing ordinance in the City of Flint in the 1960's. This ordinance was the first open housing ordinance adopted by public referendum, in the United States, after the City Council had refused to adopt such legislation. I also acted as attorney for the supporters of the ordinances in their successful litigation in which they won the rights of public assembly on the grounds of the City Hall to promote the cause of the open housing ordinance. Several weeks of intensive legal work on the litigation and several months of public advocacy of the issue were required.

(c) I have previously served as a member of the Board of Directors of the Greater Flint Chapter of the National Association for the Advancement of Colored People. I served a term of four years on the board. Several hours of work each week were required.

(d) I have served as Vice President and as a member of the Board of Directors of the Genesee County Legal Aid Society, which provided free legal service to poor people. I served for a term of two years as Vice President and a further term of approximately four years as a board member.

(e) I served as attorney for a group of citizens which was improperly denied use of a public facility by the City Council of Flint, Michigan to conduct a meeting protesting U. S. involvement in the Vietnam war. Although the trial court ruled with the city, I obtained a reversal of that decision on an emergency appeal to the Michigan Court of Appeals. Approximately one month of intensive legal work was required.

(f) As Chairman of the Board of Trustees of Mott Community College for the past four years, and as an elected member of the Board of Trustees of that college since 1969, I have consistently supported the policy of open admissions to all, and for a policy of pursuing the employment of minorities on the faculty and staff of that urban college. For the past 18 years, several hours of my time each week have been devoted to this responsibility.

(g) I have, as a member of the Genesee County Legal Aid Society, furnished pro bono services to persons who were indigent or of limited means. Additionally, I continue this practice individually when persons who are indigent appeal to me for legal assistance. Also, in the litigation referred to in (b) and (f) above, I provided extensive pro bono services to groups of citizens whose rights had been denied by governmental authorities. It is difficult to estimate the time expended, but it does amount to several hours weekly.

(h) I have been a consistent supporter and advocate for civil rights causes in my community. It is difficult to estimate the time expended, but it has been considerable.

(i) I was a founding member, a member of the original board of directors and legal counsel for the Flint Environmental Action Team, Inc. which has crusaded for a healthier, pollution-free and beautiful environment for all citizens. Again, it is difficult to estimate the time expended, but it was very substantial.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not currently belong to any organization which discriminates on the basis of race, sex or religion.

From 1956 to 1965 I was a member of the Flint (Michigan) Jaycees, which restricted its membership to young men. I, of course, have not been a member of the organization for the past 22 years. The issue of the membership policy never arose during the period of my membership, although recently the organization's policy has been amended, by virtue of legal action, to include women as members. I am in agreement with this modification of policy.

I was formerly a member of the Knights of Columbus from approximately 1965 to 1975. The Knights of Columbus restricts its membership to Catholic men. The issue of the membership policy never arose during the period of my membership. I am no longer a member.

I was a member of the Benevolent Protective Order of Elks from approximately 1960 to 1965. Membership, I discovered, was basically restricted to Caucasians. I protested this policy in letters to the officers of the organization and ultimately resigned my membership when the national convention defeated an attempt to revise this membership policy.

I am not now, nor have I been for many years, a member of any organization which discriminates on the basis of race, sex or religion.

3. (Judicial Nominees Only) Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In the Eastern District of Michigan there is a selection process by which a bipartisan committee of members of the State Bar of Michigan receives answers to questionnaires and conducts formal oral interviews of those individuals who have expressed an interest in a federal judicial appointment. This committee, consisting of approximately thirty members, is appointed by the Republican State Chairman and includes Republicans, Democrats and Independents.

The committee's recommendations, which are to be based solely on questions of competency and integrity, with no political evaluation, are forwarded to the state chairman who in turn, acting in conjunction with the senior member of the Republican Congressional delegation from Michigan (who consults, so I am advised, with other members of the Congressional delegation), submits a recommendation from the list of those approved by the bipartisan committee of Michigan lawyers. The senior member of the Republican congressional delegation then announces the recommendation and transmits it, so I am informed, to the Department of Justice. At this point the formal investigation and evaluation by the Federal Bureau of Investigation, American Bar Association, et al commences.

I have been interviewed by the Michigan Lawyers Committee, by the Federal Bureau of Investigation, by a representative of the American Bar Association, and by representatives of the Department of Justice during the selection process.

I have also submitted answers to questionnaires to the American Bar Association, together with copies of legal briefs which I have prepared during my professional practice.

4. **(Judicial Nominees Only) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.**

No one involved in the process of selecting me as a judicial nominee has discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue or question.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Richard Lesley Voorhees

2. Address: List current place of residence and office address(es).

Residence:
Mr. Richard L. Voorhees
1112 Woodvale Avenue
Gastonia, North Carolina 28054
(704) 867-7094

Office:
Mr. Richard L. Voorhees
Attorney At Law
317 South York Street
Post Office Box 1931
Gastonia, North Carolina 28053-1931
(704) 867-2391

3. Date and place of birth.

June 5, 1941
Syracuse Memorial Hospital
Syracuse, New York

4. Marital Status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Barbara Humphries Voorhees.

Spouses Occupation: Director of Marketing and Communications.

Employer: United Way of Gaston County, 200 East Franklin Boulevard, Gastonia, North Carolina 28052. (704) 864-4554

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Davidson College, Davidson, North Carolina, 1959 to 1963. B.A., French, June 4, 1963.

University of North Carolina School of Law, Chapel Hill, North Carolina, 1965 to 1968. J.D., June 3, 1968.

Gaston College, Dallas, North Carolina, 1979 to 1980, accounting courses.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

a. 1980 to present: Richard L. Voorhees Law Firm, Gastonia, North Carolina. Proprietor.

b. 1968 to 1980: Garland, Alala, Bradley & Gray, later Garland & Alala, Attorneys At Law, Gastonia, North Carolina. Associate, 1968 to 1974; partner 1974 to 1980.

c. 1980 and 1982: Gaston College, Dallas, North Carolina, part time teacher of business law and medical law and ethics.

d. 1970 to 1972 and 1983 to 1986: Gaston County Board of Elections (part time). Chairman, 1985-1986

e. 1984 to present: Limited partner for investment only, Fox & Carskadon Financial Corporation, Century Properties Fund XIX.

f. In addition to the organizations listed under question 10 below, I was connected with and held a title in the following:

Gastonia Jaycees
1968-1977 (director 1973-75)

Blue Ribbon Task Force on Downtown Gastonia
1985 to 1986 (member)

Little Theatre of Gastonia
1976 to 1978

Gaston Comprehensive Day Center
1970 - 1973 (director, president)

Nursing Home Advisory Committee of Gaston County
1978-1979 (member)

North Carolina Fund for Individual Rights, Inc.
1977 to 1987
(director since 1977, secretary 1978-1979, vice president 1979-1986, president 1986-1987. Resigned all offices, 1987)

Sherwood Elementary School PTA
1975 to 1983
(president, 1980-1981)

Grier Junior High School PTO
1981-1986
(president, 1983-1984)

Gallagher Trails Country Club
1974 to 1976 (president, 1974)

Parker Moot Court Club
September, 1965 to May, 1966 (Secretary)

Student Bar Association Legislature
October, 1966 to May, 1968
(elected class representative for two years)

Society of International Law
October, 1966 to May, 1968 (treasurer)

Phi Delta Phi (law fraternity)
October, 1966 to May, 1968

7. Military Service: Have you had any military service?

Yes.

If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

1959-1963	Davidson College, U.S. Army R.O.T.C., Cadet.
July 1, 1963 - June 30, 1965	U.S. Army Signal Corps, active duty, 2nd Lieutenant, later 1st Lieutenant.
July 1, 1965 - May 15, 1969.	U.S. Army Reserves, final rank Captain.

Service number: 05 319 390; Honorable discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Full football scholarship, Davidson College, 1959-1963.

Richard L. Voorhees
Biographical Information (Public)
Page 3

9. Bar Associations. List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Name	Address	Dates	Office
American Bar Association	750 N. Lake Shore Drive Chicago, Illinois 60611 (312) 988-5000	10/68 to present	past member litigation and family law sections
North Carolina Bar Association	1025 Wade Avenue Post Office Box 12806 Raleigh, NC 27605 (800) 662-7407 member number 02541	11/68 to present	member: family la litigation, general practice and real property sections; Lawyer Referral S 1980 to present
27-A Judicial District and Gaston County Bar Association	c/o Mr. Jesse Caldwell, President Post Office Box 1596 Gastonia, NC 28053-1596 (704) 864-0235	10/68 to present	President 1982-83; 1983-84. Chairman Library Com., ca 1974-76; Pro Bono Project 1986-present
NC Academy of Trial Lawyers	208 Fayetteville Mall Post Office Box 767 Raleigh, NC 27602-0767 (800) 722-6710 (919) 832-1413	1977 to present	Legislative Liaison Committee

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations which lobby:

Gaston County Chamber of Commerce
(member, 1980 to present)
(director, 1984 to present)

Homebuilders Association of Gaston County
(director, 1985-present)

All bar associations listed in Question 9 above.

Other Organizations:

Noon Optimist Club, an affiliate of Optimist International.
1969 to present (president, 1976; director periodically)

Gastonia Community Concert Association
1973 to 1976; (1985 to present - director)

Gaston County Museum of Art And History
1980 to present

Gaston Skills, Inc. (sheltered workshop)
1981 to present (director and general counsel since 1981)

Julia B. Chandler Scholarship Committee
1985 to present

First Presbyterian Church
1970 to present
(deacon, 1974 to 1976; Elder, 1983 to present)

Davidson College Alumni Association
1963 to present
(Stewart Scholarship Committee, 1976 - 1977)

Davidson College Gaston County Alumni Association
1970 to present
(president, 1974)

University of North Carolina Alumni Association/University of North Carolina Law School
Alumni Association
(various years to present)

Ashbrook High School Athletic and Academic Booster Clubs
1985 to present

University of South Carolina Gamecock Club
1986 to present

North Carolina College of Advocacy
November 14, 1979 to July, 1982 and July, 1987 to present

Southampton Racquet Club
1977 to present

City Club of Gastonia
1985 to present

Gaston County Wildlife Clubhouse Association
1972 to 1987 (director, various years to 1984)

Kappa Sigma (social fraternity)
January, 1960 to May, 1963
Lifetime Alumni Association membership is automatic

11. Court Admission. List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

North Carolina Superior Court, November 13, 1968.
United States District Court for the Western District of North Carolina, June 9, 1969.
North Carolina Supreme Court, September 8, 1969.
Tax Court of the United States, December 10, 1969.
United States Fourth Circuit Court of Appeals, September 21, 1978.
United States District Court for the Middle District of North Carolina, August 27, 1981.

To my knowledge no such court membership has lapsed.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent.

February 11, 1986, updated April 13, 1987.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

Richard L. Voorhees
Biographical Information (Public)
Page 5

15. Citations: If you are or have been a judge, provide citations for: (1) the ten most significant opinions you have written; (2) a short summary of all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I served on the Gaston County Board of Elections by appointment of the Governor of North Carolina from 1970 to 1972 and from 1983 to 1986. It is a three person board directly responsible for the conduct of all elections for federal, state, county and certain municipal elections within Gaston County. I became chairman in 1985 and conducted several hearings relative to contested races. I resigned in January, 1986 to run for the North Carolina House of Representatives.

I have been a notary public appointed by the Secretary of State of North Carolina from October 17, 1983 to the present.

I ran for election to the North Carolina House of Representatives, 44th House District, in 1986, and voluntarily withdrew in September of that year. Senator Jesse Helms had made public his intention to recommend me for a federal judgeship. I could not have completed the two year term as representative if appointed a judge. My campaign manager, Vernon Abernethy, C.P.A., took my place and won the election.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

Yes. August 25, 1980 to present.
317 South York Street
Gastonia, North Carolina 28053-1931

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Law firms or offices:

October 28, 1968 - August 25, 1980. Garland, Alala, Bradley & Gray, later Garland & Alala, Attorneys At Law. Associate, 1968 - 1974; partner 1974 - 1980; 192 South Street, Gastonia, NC 28053-0859, (704) 864-2634.

Companies or governmental agencies:

1980 and 1982. Gaston College, U.S. Highway 321, Dallas, NC 28034, part time teacher of courses in business law and medical law and ethics.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General civil practice, with emphasis on contract, business, domestic and personal injury litigation. Office practice served primarily small business, real estate, estate planning, bankruptcy, social security disability and workers compensation clients.

From 1968 to 1975, in 1980-1982, and in 1987, I represented indigent defendants in criminal matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Areas of special competence include real estate financing and development and land title examination, building trades litigation, domestic litigation, personal injury trial work, small business development and estate planning. Typical clients include:

(1) Real estate developers of condominiums, shopping centers or subdivisions as to financing and structuring of projects, representation with governmental officials, drafting of agreements, title examinations and closings of individual parcels or units.

(2) Building contractors for defense or assertion of rights over construction defects or non-payment of contract price. Litigation involves lien enforcement, expert testimony concerning quality of defective construction.

(3) Married individuals for counsel and trial in issues of separation, divorce, equitable distribution, alimony, child custody and support.

(4) Individuals involved in motor vehicle collisions: compensation for damages for personal injury, property damages and other losses.

(5) Claimants for social security disability or workers compensation benefits.

(6) Business or professional people to form a proprietorship, partnership or corporation, establish capital structure and relationships between principals and basic tax planning. Later work might include dispute resolution among principals, creditor-debtor relationships, suppliers and customer contracts, employer-employee matters, financing and secured transactions, litigation, shareholder relations, recapitalization and dissolution.

(7) Individuals seeking to conserve assets and fulfill family objectives through an estate plan, requiring drafting of wills, trust agreements and powers of attorney.

(8) Estates of deceased persons, for collection and investment of assets, preparation of reports and tax returns, resolution of claims and distribution to beneficiaries.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly throughout career.

2. What percentage of these appearances was in:
   (a) federal courts: 10%
   (b) state courts of record: 82%
   (c) other courts: 8% —

3. What percentage of your litigation was:
   (a) civil: 82%
   (b) criminal: 18%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
   As sole counsel: 125
   As co-counsel: 3

5. What percentage of these trials was:
   (a) jury: 10%
   (b) non-jury: 90%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Caption: Jessie Moss v. East Baptist Church, 75-CvS-291.

Court: Superior Court of Gaston County.

Role: Sole counsel For Plaintiff, Jessie Moss.

Date: Jury trial occurred January 23 and 24, 1977.

Trial Judge: Lacy H. Thornburg, Judge of Superior Court, now Attorney General of North Carolina. North Carolina Department of Justice, Post Office Box 629, Raleigh North Carolina 27602-0629. (919) 733-7387.

Opposing Counsel: Grady B. Stott, Attorney At Law (President, North Carolina State Bar, 1979, and fellow: American College of Trial Lawyers) Stott, Hollowell, Palmer & Windham, Branch Banking & Trust Building, Third Floor, Post Office Box 995, Gastonia, North Carolina 28053-0995, (704) 864-3425.

Disposition: Verdict for Defendant, no appeal.

Jessie Moss was a florist injured in a fall from portable steps provided by the defendant church for access from a stage to the floor of a fellowship hall. She sustained a transcervical fracture of the left hip. The jury found that the church was negligent in the construction and design of the portable steps, but also that plaintiff did not sufficiently watch her step. Contributory negligence is an absolute bar to recovery of damages in North Carolina. Expert testimony and demonstrative evidence established failure of the portable stairs to comply with the building code and the standard of care owed an invitee.

This case illustrates the difficulty in surmounting the defense of contributory negligence in slip and fall cases. Mrs. Moss had no recollection of attentiveness to where she placed her feet as she began to descend the stairs. The case further showed the inherent difficulty in recovering against a church, despite careful attention to the issue in jury selection.

(2) Caption: Great Falls Knitwear, Inc. v. South Carolina Tax Commission.
Commission File Number 28500032.

Court: South Carolina Tax Commission.

Role: I appeared as a representative of Great Falls Knitwear Company, unassisted.

Date: Hearing of the Corporation Income Tax Division on August 5, 1971.

Hearing Officer: Arnell M. Coker, Sr., Director, and Charles D. Brown and L. K. Stickland, panel members.

Opposition: Charles D. Brown, Auditor, who proposed an additional assessment of tax.

Disposition: Adverse report of auditor withdrawn and net operating loss carry forward allowed.

The taxpayer, Great Falls Knitwear, Inc., had commenced a manufacturing business in Great Falls, South Carolina. New businesses were allowed to carry forward start-up losses for three years, but not if the entity were a continuation of a previous business. The auditor asserted that the company had taken over from Southern Knitwear Mills, Inc. Taxpayer's CPA stated that under existing South Carolina law the loss carry forward would be disallowed, "If any excuse whatever can be found for disallowing it."

This case illustrates what can be accomplished with an administrative body through thoughtful correspondence, marshalling of facts and an appeal to the purposes of the statute under which the contest arose. Friendly legal authority was non-existent, but contrary authority could be distinguished on factual differences.

(3) Caption: Uzzell v. Friday, 592 F.Supp. 1502 (1984) and 618 F.Supp. 1222 (1985)
Civ. No. C-74-178-D.

Court: United States District Court, Middle District of North Carolina, Durham Division.

Role: I served as sole counsel for plaintiffs and intervening plaintiffs during the last four years of this ten year litigation and contributed 254.1 hours of chargeable time. These services, and the Court's opinion of them, together with the contributions of my law clerks and paralegals, are detailed in the Memorandum of Opinion supporting award of fees, reported at 618 F.Supp. 1222 (1985). This case at the summary judgment and Fourth Circuit and Supreme Court appeal levels had been handled by Hugh Joseph Beard, a Charlotte, North Carolina, attorney. He referred the case to me upon his appointment as counsel with the United States Department of Education in 1981.

Date: Trial occurred September 6 through September 8, 1983, without a jury.

Trial Judge: Frank W. Bullock, Jr., District Judge, Post Office Box V-1, Greensboro, North Carolina 27402, (704) 378-5034.

Opposing Counsel: Elizabeth C. Bunting, then Assistant Attorney General for the State of North Carolina (with Andrew A. Vanore, Jr., Deputy Attorney General), now Special Assistant to the President of the University of North Carolina, Chapel Hill, North Carolina 27514; Napoleon Williams, NAACP Legal Defense Fund, 99 Hudson Street, Sixteenth Floor, New York, New York 10013, (212) 219-1900; James C. Fuller, Jr. (Board of Governors, North Carolina Academy of Trial Lawyers, adjunct professor, University of North Carolina School of Law and North Carolina Central University Law School), Thorpe, Fuller & Slifkin, P.A., 908 West Morgan Street, Raleigh, North Carolina 27603, (919) 828-2467: Lucien Capone, III, Assistant Attorney General, re: fee award phase, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629, (919) 733-7387.

Disposition: Judgment for plaintiffs and intervening plaintiffs. No appeal by defendants.

Students at the University of North Carolina at Chapel Hill brought action for declaratory relief and an injunction against the enforcement of provisions of the Student Constitution which required the appointment of students to the Campus Governing Counsel on the basis of race and against enforcement of the Instrument of Student Judicial Governance requiring the appointment of students to the undergraduate court on the basis of race. The challenged provisions were found to violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

This case was significant in the magnitude of parties, time required (of a sole practitioner), documentary evidence, issues, discovery and of counsel arrayed in opposition. The trial required extraordinary effort to simplify and abbreviate the presentation, and keep the focus on relevant issues. The law governing racial discrimination in the post Bakke environment was in flux throughout the trial preparation stage. While the decision of defendants not to appeal deprived the case of further development at the appellate level, it nevertheless provides some guidance to institutions of higher learning whose student officials contemplate adoption of race conscious rules. The case demonstrates the tenacity and financial commitment required of counsel seeking to vindicate rights of student plaintiffs against well funded and determined opposition.

(4) Caption: State of North Carolina v. Elijah Rippy, 74-CR-29845 (first degree murder); 74-CR-29952 (kidnapping); 74-CR-29956 (robbery with a dangerous weapon); 74-CR-29958 (breaking, entering and larceny).

Court: Superior Court of Gaston County

Role: Sole counsel for defendant. I had 81.25 chargeable hours in out of court time and 8.50 hours in court.

Date: I was appointed to represent Mr. Rippy, an indigent defendant, February 7, 1975. A plea bargain and sentencing terminated his trial after jury selection on August 26, 1975.

Trial Judge: B. T. Falls, Jr., Superior Court Judge (now deceased).

Opposing Counsel: Joseph G. Brown (former Gaston County District Attorney, now in private practice), 26 East Woodrow Avenue, Belmont, North Carolina, (704) 825-5191; George Hill, Assistant District Attorney, Post Office Box 2164, Gastonia, North Carolina (704) 865-6441.

Disposition: The charges of breaking, entering and larceny and armed robbery were dismissed; defendant pleaded guilty to kidnapping and second degree murder, drawing a life sentence and 30 years, respectively.

This case involved seven black defendants charged with the death of Ronald Best Becton, a white insurance agent. The state's evidence, acquired through statements of co-defendants, tended to indicate that when the victim entered a home where the defendants were staying, Mr. Rippy forced him to the floor, held a shotgun to his head and robbed him. Later Mr. Rippy and three other defendants placed Mr. Becton in the trunk of a car, took him to Spencer Mountain Road, removed him from the trunk and Mr. Rippy shot him in the back of the head with a .410 gage shotgun. Most defendants were apprehended in New York City after several days. Two others remained in Gastonia and gave statements to police. These events generated considerable publicity over a period of time. Among other motions, I made one to remove the trial to Cleveland County from Gaston County because of inflammatory and substantial adverse local publicity. This motion was granted by Sammy Chess, Jr., Superior Court Judge, on May 8, 1975. However, on July 18, 1975, Judge Falls entered an order purporting to overrule Judge Chess and directing that all defendants be tried at the same time. This was reversible error going into the trial. The jury was impaneled on August 25 and August 26, 1985. A plea bargain was struck when one of the co-defendants, a prospective state's witness, had begun to froth at the mouth and was unable to stand trial because of mental disorder.

This trial was significant in that it galvanized the community with outrage, stirred up animosities and caused considerable attention to focus on the various proceedings. From the defense standpoint, it appeared that all co-defendants sought leniency by cooperation with the authorities at the expense of Mr. Rippy. Under the plea, the death penalty was avoided. The case illustrates the emotions which can arise during a widely publicized trial and the imperative that counsel do everything within his or her power to protect the rights of the accused, notwithstanding the public outcry. The case further illustrates the pro bono aspects of indigent defense work during my career in law. Although chargeable time at standard hourly rates for a fee paying client would have warranted a fee in excess of $4500.00, the fee award was $500.00.

(5) Caption: Russ v. Russ, 43N.C. App. 74, 257 S.E. 2d 677 (1979) (District Court facet) and Russ v. Russ, 50N.C. App. 553, 274 S.E. 2d 259 (1981) (Superior Court facet).

Court: Gaston County District Court and Gaston County Superior Court, respectively.

Role: I represented defendant husband in both the District Court and the Superior Court trials and prepared an appeal in each case to the North Carolina Court of Appeals. A law clerk provided a portion of the research which went into preparation of the appellate briefs.

Date: Both cases began in 1977. The District Court appeal was decided on September 18, 1979, and the Superior Court appeal on February 3, 1981.

Trial Judge: In the District Court case it was Lewis Bulwinkle (now retired), 1602 South Florida Street, Gastonia, North Carolina 28052, (704) 864-2407. Trial judge in the Superior Court case was Robert W. Kirby, Resident Superior Court Judge of Gaston County, Post Office Box 2164, Gastonia, North Carolina 28053-2164, (704) 865-6441.

Disposition: Defendant lost in the trial court in both cases, but won on appeal.

Plaintiff wife sued in a Florida Court for accrued alimony and brought action in the Gaston County Superior Court to enforce the Florida judgment based on the full faith and credit clause of the United States Constitution. Defendant contended that service of process on him in the Florida case was defective, such that in personam jurisdiction did not attach. On appeal of the Superior Court action, the North Carolina Court of Appeals held that service in the Florida action was defective and that the Florida judgment could not be accorded full faith and credit in North Carolina. Defendant also counterclaimed below for a reduction in the amount of prospective alimony. This facet of the case was severed and transferred to the District Court trial division, which normally hears domestic matters. The District Court Judge did reduce by half the amount of alimony payable, but conditioned the modification on defendant's catching up alimony arrearages. On appeal of the District Court judgment, the North Carolina Court of Appeals held it error to attach a condition to the reduction in alimony, since no evidence of arrearages was presented at trial.

The obstacles to plaintiff's legitimate goals here were not mere technicalities but substantial rights of defendant, which deserved closer attention by the respective trial judges.

(6) Redding v. Mitchem, 78-CvD-472.

Court: District Court of Gaston County.

Role: Sole counsel for plaintiff.

Date: October 18, 1978.

Disposition: Jury verdict in favor of plaintiff on complaint and against defendant on counterclaim.

Trial Judge: Berlin H. Carpenter, Jr., District Court Judge, Post Office Box 2164, Gastonia, North Carolina 28053-2164, (704) 865-6441.

Opposing Counsel: Frank P. Cooke (North Carolina State Bar Councilor, 1979-1985) Fifth Floor, Commercial Building, Post Office Box 1885, Gastonia, North Carolina 28053-1885, (704) 864-4354; and

Melvin G. McKeown, Jr. (Supreme Court Board of Commissioners on Grievances and Discipline, 1972-1976, South Carolina Ethics and Professional Responsibility Committee, 1970-1972), Spratt, McKeown & McCrae, 26 West Liberty Street, Post Office Box 299, York, South Carolina 29745, (803) 684-3559, (803) 684-4851.

Plaintiff sued to recover the balance due on a promissory note given for the purchase of a flower shop. Defendant essentially conceded that issue but counterclaimed for a similar amount owed by the business for prospective yellow page advertising. Under the business purchase contract, the plaintiff seller had agreed to pay the debts of the business owed at the time of sale. The issue was whether the defendant knew about the advertising debt and had agreed to assume it as a part of the contract. The jury believed that the defendant had knowingly assumed the obligation to pay for the subsequent directory advertising even though it was arguably a "debt" of the business at the time of sale.

Defendant apparently thought she had found a legally compelling excuse not to pay the promissory note. But the jury was able to place the plaintiff's duty to pay debt in a broader perspective, colored by the purposes and benefits contemplated in the contract. Defendant's counsel attempted to show that phone books had not been distributed at the critical date, discrediting plaintiff's testimony that the advertising was examined and discussed during contract negotiations. Southern Bell witnesses persuaded the jury otherwise. The fact that the defendant had once been a legal secretary to defense counsel McKeown probably affected his credibility with the jury, whose members would have paid greater heed to fully independent counsel.

(7) Caption: Mitsui & Co. (USA), Inc., Plaintiff v. Carolina Throwing Co., Inc., Defendant and Third Party Plaintiff v. Unifi, Inc., Third Party Defendant.

Civil Action No. SH-75-115.

Court: United States District Court for the Western District of North Carolina, Shelby Division.

Role: Sole counsel for Carolina Throwing Co., Inc. My chargeable time was 196 hours. Substantial discovery was undertaken including numerous requests for admissions and production of documents, depositions and interrogatories.

Date: Consent judgment in main action entered February 22, 1977; Third Party claim settled March, 1977.

Trial Judge: Woodrow W. Jones, Chief Judge (now senior status), Post Office Box 741, Rutherfordton, North Carolina 20139, (704) 287-4356.

Opposing Counsel: Newitt & Bruny, Attorneys for Plaintiff, Roger H. Bruny and John G. Newitt, Jr., 417 East Boulevard, Suite 104, Charlotte, North Carolina 28203, (704) 372-6181.

Frazier, Frazier & Mahler, Attorneys For Third Party Defendant, Harold C. Mahler and Cyrus Clifford Frazier, Jr., Suite 206, Southeastern Building, Post Office Drawer 1159, Greensboro, North Carolina 27402, (919) 272-2274, 275-8761, 378-9411.

Disposition: Settlement in favor of plaintiff by consent judgment with terms of payment in compromise amount and mutual dismissal of claims and counterclaims involving the third party action

Carolina was a venerable textile employer located in the Town of Kings Mountain, North Carolina, and owned by a distinguished local family. The case was readied for jury ~~trial~~ in March, July and again in September of 1976. Carolina management had been turned over to Unifi, a competitor, which contracted to buy yarn from Mitsui and ran the yarn in the Carolina plant. Mitsui brought a diversity action seeking $151,000.00 owed on account. Carolina defended on grounds the goods were non-conforming, and purchased by Unifi, not Carolina, at a price in excess of market. Carolina brought in Unifi in diversity as a Third Party Defendant, and asserted breach of fiduciary relationship, self dealing and mismanagement and sought indemnity and actual and punitive damages. Unifi pleaded in bar 1) arbitration, 2) limitation of liability, and 3) indemnity for litigation costs clauses contained in the management agreement. Unifi further contended that Carolina was controlled by Monsanto Chemical Corporation under a voting trust and that any mismanagement was attributable to Monsanto, which had been released by Carolina from any liability by mutual release, which inured to the benefit of Unifi. Unifi's motion for summary judgment based on the arbitration clause was treated as a motion for stay pending arbitration and granted. In the meantime related issues between Mitsui and Unifi were being heard in arbitration proceedings in New York.

This case represents a complex commercial matter involving numerous parties and witnesses located in different jurisdictions and a vast array of documents. The issues included questions of conflicts of law and contract, sales, corporation, damages and remedies law.

Settlement required a creative approach and some timely intervention on the part of Judge Jones, at the eve of the trial. He granted time to explore alternatives for compromise. This led to enlightened concessions on all sides and helped conclude the case.

(8) Caption: G. B. Harrill, William D. Harrill and Eugenia Harrill Young, v. Iowa Mutual Insurance Company, SH-C-78-24.

Court: United States District Court for the Western District of North Carolina, Shelby Division.

Role: I served as co-counsel with S. Alan Albright (Gray, Albright & Sumner, York Chester Building, Post Office Box 2727, Gastonia, North Carolina 28053, (704) 867-0707). We had approximately equal time in the handling of the case. Mr. Albright enlisted my services to add trial experience. Discovery required depositions of Iowa Mutual officers in Iowa.

Date: 1979, 1980.

Trial Judge: Woodrow W. Jones, Chief District Judge (now Senior status), Post Office Box 741, Rutherfordton, North Carolina 28139, (704) 287-4356.

Opposing Counsel: William C. Morris, Jr., Morris, Golding, Blue & Phillips, Post Office Box 7316, Asheville, North Carolina 28807.

Disposition: Settled by consent judgment during the presentation of plaintiff's evidence.

Mr. G. B. Harrill was an elderly gentleman who had established a prosperous agency specializing in sales of defendant's insurance policies in Forrest City, North Carolina.

Iowa Mutual bought the agency under a purchase contract, which was the subject of this action. The plaintiff sought to establish a right to adequate payment under the terms provided for the purchase price and to recover damages for securities fraud under Section 10-b-5 of the Securities Act.

Plaintiff's accounting evidence established a right to additional payment in the contract phase of the action, and the case was settled as a result. Although the securities fraud and common law fraud as facts of plaintiff's claim ultimately gave way, the case highlighted the imperative of good faith and fair dealing by the large insurer acquiring its independent agency.

(9) Caption: Bradshaw-Hayes, Inc., v. Robert O'Neill, Inc., J. E. Robinette and wife, Mrs. J. E. Robinette; and First Federal Savings & Loan Association of Belmont, North Carolina, 80-CvD-8467.

Court: Superior Court of Mecklenburg County, North Carolina.
Role: Sole counsel for defendant Robert O'Neill, Inc., a general contractor.
Date: Tried to jury verdict on January 4 and 5, 1982.

Trial Judge: Chase B. Saunders, Chief District Court Judge (now Resident Superior Court Judge), Mecklenburg County Courthouse, 800 East 4th Street, Suite 312, Charlotte, North Carolina 28202, (704) 373-6738.
Opposing Counsel: Plaintiff was represented by Joe T. Millsaps, Palmer, Miller, Campbell & Martin, P.A., 1800 First Citizens Bank Plaza, 128 South Tryon Street, Charlotte, North Carolina 28202, (704) 377-5700. Defendants Robinette were represented by Martin C. Pannell, Williams & Pannell, 25 North Brady Avenue, Post Office Box 46, Newton, North Carolina 28658, (704) 464-3571. Attorney for First Federal Savings & Loan was Arthur C. Blue, III, Whitesides, Robinson, Blue & Wilson, 246 West Main Street, Post Office Box 1115, Gastonia, North Carolina 28053-1115, (704) 864-5728.
Disposition: Jury verdict in favor of defendant Robert O'Neill, Inc. on its cross claim against the Robinettes.

Plaintiff was a flooring contractor who floored the Robinettes' house. Plaintiff sought its contract price in the amount of $3250.00 from O'Neill as general contractor and sought to enforce a subcontractor's lien. O'Neill denied any contract with plaintiff, contending plaintiff's contract was directly with the Robinettes. O'Neill also cross claimed against the Robinettes for the balance of the purchase price on the general contract of construction. In answering the cross claim, the Robinettes contended that O'Neill's contract was for a fixed fee, that he did poor work and failed to complete the contract, requiring the Robinettes to pay others to finish the work.

This case involved many features of the typical building contract action: a lien sought to be enforced, disputes over quality of work, the price term of the contract, an unpaid subcontractor, running changes in the specifications requested by the owner, and resulting litigation with voluminous documents, heavy discovery and conflicts in the evidence. The problem for counsel is to present the evidence and arguments with sufficient succinctness and clarity that they are not lost in a sea of confusion. Here the jury resolved all issues in favor of the tradesmen and against the owner.

(10) Martha C. Barnette vs. Richard S. Schweiker, secretary of Health and Human Services, defendant, civil action number C-81-0196.

Court: United States District Court for the Western District of North Carolina, Charlotte Division.

Role: Sole counsel for plaintiff.

Date: Order of remand dated June 8, 1982 issued by Judge McMillan; final decision by appeals counsel of the Department of Health and Human Services, Social Security Administration, dated September 15, 1983.

Trial Judge: James B. McMillan, United States District Court Judge, 401 West Trade Street, Room 254, Charlotte, North Carolina 28202, (704) 371-6106.

Opposing Counsel: Assistant United States Attorney, Harold Bender, Charles R. Jonas Federal Building, 401 West Trade Street, Room 248, Charlotte, North Carolina 28202.

Disposition: Claimant was found to be capable of work at the office of hearings and appeals level of the Social Security Administration, but an appeal to the Federal District Court brought about a remand for the taking of additional evidence, which ultimately resulted in a finding of disability from the Appeals Council under the Social Security Administration.

Martha Barnette applied for social security benefits, but was denied at the local office and upon reconsideration determination. I represented her at the Office of Hearings and Appeals level without success. She was suffering from brown lung disease, hypertension, bronchitis, dyspnea, sleeplessness, urine incontinance and limited intellectual capacity. On remand a psychological study reinforced the evidence, resulting in a finding of disability.

In this matter the ultimate recovery by claimant required legal efforts from April 24, 1981, to September 22, 1983. My attorney's chargeable time was 48.1 hours and my office paralegal spent 29.7 hours. Where evidence of limited function is not clear cut, counsel must insure that all available avenues of proof are utilized to demonstrate disability. Often, disabling conditions snowball and counsel must demonstrate the adverse trend not reversible by therapy.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in the matter. (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In general practice, every matter brought through the door is significant to the client. The lawyer is on call at all times to put out legal fires arising in the affairs of average citizens. My recurrent service to families and citizens over nineteen years has been one of my most significant contributions to the work of the legal profession. Wills become real estate closings, which become corporations and small businesses, spawning matters involving collections, liens, bankruptcys, mergers, covenants not to compete, buy sell agreements and liquidations. It was notably satisfying when, years after handling an adoption proceding, the adopted child, now an adult, came in for routine legal business. A repetition of this pattern defines the general practice. This type of practice is at the far end from that where one or two clients produce hundreds of billable hours per year, but it is closest to the people and carries its own unique satisfaction to the attorney.

Clean Water Legislation from the early 70's brought immediate problems for corporate clients facing significant expenditures on equipment and land for treatment facilities. Textile clients predominating in this area took a positive attitude, but much had to be done to smooth the road to compliance. I went to some lengths with a textile dye house, for example, to protect the South Fork of the Catawba River without bankrupting the plant.

I incorporated "Area Industries of Kings Mountain, Inc.", a group of manufacturers endeavoring to cope with the cleanup of two watersheds. As attorney for the group, I spent vast hours helping the city of Kings Mountain develop an ordinance that met the fiscal and due process needs of potential violators, while insuring the cleanup goals of the city.

In terms of financial responsibility, the most significant matters in my legal career involved development of Eastridge Mall in Gastonia, Abbey Plaza in Belmont, the North-South Associates Mall in Greensboro and Sands at Carolina Beach condominium development. Millions of dollars were at risk, and a multitude of legal problems had to be solved within tight time frames, dictated by construction loan commitment deadlines: financing, leasing, security instruments, waivers, title opinions and title insurance, all had to be set in perfect order to satisfy the demands of land owners, ground lessees, major and minor tenants, investors and lenders. I could spare no effort as responsible attorney to combine the disparate elements into a workable mix at the critical time.

I have had the pleasure of serving as general counsel of the North Carolina Hairdressers and Cosmetologists Association under nine presidents since 1978.

For five years I guided the Gaston County Board of Elections through the legal intricacies of the election law, and participated as chairman and member on a number of panels resolving electoral disputes.

In the 1970's I spoke on behalf of the local bar to school groups to stem the rising rate of drug use. Later, as bar president, I involved youth in the first mock trials to foster better understanding of the legal system. The present moot court competition has become an annual event.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers.

> There are no such anticipated receipts. Please see also answer to question II-5 below as to income from professional services.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial years as a judge.

> I know of no categories of litigation and financial arrangements that are likely to present potential conflicts of interest during my initial service. Any which should arise will be dealt with by resignation, termination or liquidation of interest, as appropriate. I shall follow any legal or ethical standard of law for resolution of conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

> No.

4. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

> I served as a member of the county Campaign Steering Committee and was the Gaston County contact for Governor James E. Holshouser's election in 1972. My responsibilities included meeting to plan strategy and appearing for the candidate in Gaston County.
>
> I was Gaston County campaign manager for James H. Carson, Jr., who ran for the office of Attorney General of North Carolina in 1974. Mr. Carson was a Charlotte, North Carolina attorney, but at the time he was serving as Judge of the North Carolina Court of Appeals. His campaign emphasized television, in which I was not involved, but I saw to the placement of radio spots, appeared for the candidate and generally represented him in Gaston County. His opponent was eventual winner Rufus Edmiston, formerly with the staff of the late United States Senator Sam Ervin of North Carolina.
>
> In 1984, I met several times as a member of the Steering Committe of the successful campaign of James G. Martin for Governor of North Carolina. Governor Martin had been a professor at Davidson College during my years there.

5. If applicable, please describe the arrangements you made to dissolve your financial interest in your law firm. What time period is involved? What arrangements have you made to be compensated for your work on pending litigation.

> I shall collect legal fees receivable in the ordinary course of business as of date of entry into government employment. Sources and amounts are not yet determinable. Pending cases will be distributed gratis to other attorneys according to client wishes. This process should be concluded within three months.

6. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the Executive Personnel Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

Source	Amounts	
	1986	Jan.-July, 1987
Richard L. Voorhees law practice (legal fees)	$100,643.00	$53,994.00
Interest:		
HIS Government Securities (IRA)	1,622.55	
HIS Government Securities		1,080.20
Captial Gains:		
Western Airlines	701.00	
HIS Government Securities series	1,217.00	
Dividends		
Public Service Company of North Carolina and Putnam Option Income Trust		1,025.00
Rent:		
Condo, Gastonia, North Carolina	1,750.00	2,450.00
Gifts:		
Catherine F. Wood, mother of Richard L. Voorhees	3,100.00	1,450.00

7. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement with schedules.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My clients have included indigents and people of varied ethnic background on a regular basis. For twelve years I practiced with a strong firm in my community, Garland & Alala. It was identified with corporate and business interests and I often did tax work and estate planning for professionals and business executives at straight hourly rates. By opening my own separate practice in 1980, I established identity as a family lawyer, a small business and real estate lawyer and a representative of injured or disabled individuals. In many cases such clients cannot afford hourly rates and have neither budget nor savings to defray legal expenses. Those with lesser ability to pay legal fees are given regular consideration for reduction in fees, particularly through fixed fee arrangements within the means of the client involved.

I served on the list for appointment of counsel to indigent defendants in criminal cases from 1968 to 1974, in 1980 through 1982, in 1987, and on a spot basis at other times. Over 100 cases were handled, from misdemeanors to capital offenses, but the great bulk were felonies. In such cases the presiding judge fixes the fees, which are rarely sufficient to cover attorney's time at standard hourly rates and typically covered only a small fraction of the time expended. The state budget for defense of such cases was often depleted during the fiscal year, resulting in further reduction of fees. These cases seldom, if ever, led to any other productive legal business.

I volunteered for the staff of the Pro Bono Project of the Young Lawyers Section of the Gaston County Bar Association, but since its founding in 1986, I have received no referrals.

I have been a member of the lawyer's referral service for most years since its inception in 1974. This program was sponsored by the North Carolina Bar Association. A lawyer signs up by fields of law, pays an annual fee and receives referrals on a rotating basis. The service involves the lawyer's commitment to counsel referrees initally on the basis of $15.00 (later $20.00) for one-half hour. Often the client problem was identified, evaluated and resolved for no more than the initial fee, whatever time was involved. This service benefits especially those who are intimidated at the threshhold of contact with the legal system.

In the course of my extensive involvement with civic and charitable organizations listed under question I-6 and I-10 above, my legal training and experience was regularly put to good use on an unpaid basis to advance the various eleemosynary purposes of the groups involved. In particular, I would mention my work for the rights and comforts of nursing home patients, who often have no relatives or outside friends to help them, and Noon Optimist youth club. The latter serves up to 350 underprivileged youth with a full time director, athletic fields and club house facilities. I coached basketball and football for several seasons with these young people.

I have supported my wife in her current avocation as president of Gaston Community Action, an agency focused solely on the needs of the disadvantaged.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I am not aware of any organization which discriminates in such respects except as follows:

(a) First Presbyterian Church in Gastonia, North Carolina. All faiths are welcome; but, by joining, one becomes a Presbyterian. I have done nothing to change this policy. My membership has continued from 1969 to the present.

(b) Noon Optimist Club of Gastonia. Optimist International, the sponsoring national organization, formerly did not recognize female members of local clubs. It adopted a new policy admitting women in 1987. The issue never arose locally during my period of membership (1969 to the present) and I made no effort to change the policy. The Junior Optimist Club, which Noon Optimist Club sponsors, has always had a large proportion of minorities and has included as members substantial percentages of girls for over ten years.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

The North Carolina Bar Association sponsors a Judicial Selection Advisory Committee. After a survey it conducted of 7,500 North Carolina attorneys, E. James Moore, the president of the North Carolina Bar Association, wrote to Senator Joseph R. Biden, Chairman of the Judiciary Committee of the United States Senate, by letter dated July 17, 1987. It stated, in part; "It gives me great pleasure to advise you that of those members of the North Carolina Bar Association who felt qualified to rate the credentials of Mr. Voorhees, the vast majority of them responded with a solid "very qualified" rating."

On August 7, 1986, Carter Wrenn, director of the National Congressional Club, with offices in Raleigh, North Carolina, notified me that Senator Jesse Helms, senior senator from North Carolina, was considering recommending me for the federal court bench.

On August 11, 1986, I met in Raleigh with Mr. Wrenn and Tom Ellis, a Raleigh, North Carolina, attorney, and Sam Curran, United States Attorney for the Eastern District of North Carolina.

On August 13, 1986, I traveled to Washington DC to meet with Senator Helms and his administrative assistant, Tom Ashcraft.

On September 8, 1986, Senator Helms wrote a letter to President Reagan recommending my nomination.

On September 9, 1986, an article concerning my proposed nomination appeared in the Gastonia Gazette. Clipping attached.

On October 3, 1986, the combined Gaston County and 27A Judicial District Bar Associations endorsed my nomination to the federal bench. Clipping attached.

On October 21, 1986, I met in Washington DC with officials of the Office of Legal Policy of the United States Department of Justice: Stephen '. Markman, Steve Matthews, Seth Liebman, and James Knapp.

On January 14, 1987, I met briefly in Washington with Steven J. Markman, Assistant Attorney General.

On March 2, 1987, FBI special agent Brown Whitley visited my law office for an interview with me. I filled out the extensive questionnaire and presented it to him in the same week.

On April 25, 1987, I submitted to the ABA Standing Committee on Federal Judiciary my answers to its Personal Data Questionnaire.

On May 8, 1987, I submitted to the Justice Department my answers to its "Information Requested of Judicial Nominees."

On June 16, 1987, I met in my law office with James Howard, who conducted an interview with me on behalf of the ABA Standing Committee on Federal Judiciary.

On July 30, 1987, President Reagan notified me by telephone that a letter was about to go to the Senate seeking confirmation of my appointment as United States District Judge for the Western District of North Carolina.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution was designed to formalize the structure of federal government in the United States and to limit governmental powers. The system of checks and balances between the discrete branches of government was a crucial device to enforce the limits. The founders feared the encroachment, gradual or otherwise, of government upon the liberties of the people. An unwritten constitution would not be trusted: it had to be written, to avoid misunderstanding and gain predictibility. The arrogation of power by a limited few was feared, but no more so than by a truculent majority inflamed by the passions of the hour. Minority opinion and interests had to be protected.

It is within the context of this understanding that one addresses the subject of the activist judiciary. The goal must be stated simply: The judiciary shall not consciously amend the Constitution. A process for that is duly provided, and it may be triggered by the Congress or by the states, but not by the judiciary.

The Court may elucidate the Constitution, but not change it. It may develop an established right or duty, but not create one of whole cloth. It will follow its own precedent but not one that proves rootless or fails of logic, reasoning, values and function. In this connection, the Court's duty to pass along judicial wisdom from one generation to the next requires that it take the long view of events. Respect for the wisdom of the past, including most particularly the Constitution itself, is the mantle of authority by which the Court presumes to set the legal course for the future.

Under what guise, then, may the federal bench be "activist"?

As a given, the lower federal courts must always research carefully the precedents of the higher courts in the tradition of stare decicis. If there is to be activism, the lower courts must be less active than the higher.

The evolution of law in the common law tradition is universally revered as the necessary adaptation of legal principles to changing conditions. The best examples are found in tort law, where in response to the industrial revolution the law had to develop mechanisms whereby the rights of injured employees, for example, could be fairly addressed. The most respected aspects of judicial acclimatization have involved no more than fine tuning of procedures and crystalization of doctrines designed to promote fairness and equity in particular cases. Any wholesale assault by the Court on established custom and tradition would be properly seen as social engineering conducted by a body ill suited to undertake it. Any authority along that line is surely reserved to the legislative branch, or to the people.

American society under federal government is demonstrably an embodiment of power reposed in people. The people exercise that power most directly through election of representatives to the legislatures. The pros and cons of particular candidates at all levels are the subject of daily conversation along every street in America. Since the judiciary is not elected, it owes deference to the legislative body in matters of social policy, except in those cases where legislative enactments defy or transgress constitutional dictate.

The imposition of broad affirmative duties on public and private institutions is transparently not a prerogative of the judiciary, but where such duties emanate from valid constitutional or legislative enactments, "continuing oversight" may be a proper function of the courts. It is said that where a wrong exists, the courts must fashion a remedy. Court supervision of a prison system, for example, might be temporarily necessary, but only in case of lapse by the executive or legislative authority directly responsible and to the extent that no more limited remedy is available.

In this information age, there is superficial plausibility in the caution posed by some judicial activists when they say: "The founding fathers did not anticipate computers and space flight", implying that modern conditions justify a clean slate approach by an activist judiciary. It is true that the Constitution was not designed to address in specifics all issues which might eventually arise to challenge government. However, I submit that the founders posited a view of human nature as unchanging, and fallen, such that the division of powers to check our wayward inclinations was meant to define the substance as well as the form of federal government. An objective view of judicial power as set forth in the Constitution, then, necessarily leads one to favor judicial restraint over activism as a matter of legal policy. Such restraint is the best guaranty that the deliberate sense of the people will resolve the most divisive social issues that arise, as they are battled out in the clamorous halls of our legislatures. My experience with juries tells me that ordinary people, or their elected representatives, can be counted on over time to come up with the most workable solutions to such problems.

The Gastonia Gazette

TUESDAY, SEPTEMBER 9, 1986

Voorhees choice for U.S. judge

By Billy Vaughn
Gazette Staff Reporter

Voorhees

WASHINGTON — Gastonia attorney Richard L. Voorhees has been recommended by U.S. Senator Jesse Helms (R-N.C.) for federal judgeship, sources on Capitol Hill said today.

The 45-year-old Voorhees said he has received no official word on the nomination, but said if he is selected to the post, "it would be a great honor."

Barbara Lukens, a spokesman for Helms, said the recomendation was made earlier this week, but that President Reagan's nomination would not occur until after U.S. District Judge David Sentell of the western district is nominated to a post with the U.S. Circuit Court of Appeals in Washington, D.C.

Ms. Lucas could not say when or if Sentell would be assigned to the Circuit Court post. Sentell has been a federal judge since his appointment by the president in 1985, according to a White House clerk.

Ms. Lukens quoted Helms as saying that Voorhees is a good choice because he is "an honest and hard-working man who has respect for the Constitution and the laws of the United States."

Voorhees, a candidate for the 44th District of the N.C. House of Representatives, would not say if he would be willing to drop from the race if appointed to

Please see VOORHEES/2A

VOORHEES

FROM 1A

the lifetime appointment.

"This whole thing is very sudden and I would have to reflect on the developments before I could go into it in any depth," he said. "I haven't made any decisions."

Voorhees has a record of close association with the Republican Party and said he chose to run for the General Assembly seat because he wanted to offer his "training and experience to the people of the Gaston-Lincoln area."

Voorhees has promised to support programs begun by Governor Jim Martin if elected. He said today he is not ready to discuss in detail his platform for the Nov. 4 election.

He served two terms — from 1979 to 1983 — as Gaston County Republican Party chairman and in 1985 and 1986 was chairman of the Gaston County Board of Elections.

In 1976, Voorhees was an alternate deligate at the Republican National Convention in Kansas City, Mo., and is a past president of the Gaston County Young Republicans.

Voorhees has practiced law in Gastonia since 1968.

Hometown

The Gastonia Gazette

Sunday, Oct. 5, 1986

- Opinion/2-3B
- Business/[illegible]
- Obituaries/8B

Section B

TOWN BRIEFS

GASTONIA

Voorhees wins bar support

Gastonia attorney Richard Voorhees, who is being considered for a federal judgeship, Friday won the overwhelming endorsement of the Gaston County Bar Association.

Sen. Jesse Helms, R-N.C., last month recommended Voorhees for a U.S. District Court Judgeship in the N.C. Western District. The 45-year-old Voorhees, during Friday's meeting at the Gaston County Country Club, was proclaimed a hard working lawyer and an excellent choice for the federal post.

"His judicial temperament experience and intelligence are all favorable factors for Mr. Voorhees," Gaston County Bar Association president T.J. Solomon II said.

ABA
AMERICAN BAR ASSOCIATION
Standing Committee on
Federal Judiciary
750 North Lake Shore Drive
Chicago, Illinois 60611
(312) 988-5000

CHAIRMAN
and Member-at-Large
Robert B. Fiske, Jr.
1 Chase Manhattan Plaza
New York, NY 10005

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
Harold Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Jr.
1400 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Gene W. Lafitte
One Shell Square
50th Floor
New Orleans, LA 70139

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
One IBM Plaza
Suite 4300
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
P.O. Box 80268
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Bldg.
Seattle, WA 98101
Samuel L. Williams
16th Floor
700 S. Flower Street
Los Angeles, CA 90017

TENTH CIRCUIT
James A. Clark
303 East 17th Avenue
Suite 1100
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Winter Bldg.
2 Dexter Avenue
P.O. Box 78
Montgomery, AL 36104

DISTRICT OF COLUMBIA
CIRCUIT & FEDERAL
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 Eye Street, N.W.
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028

STAFF DIRECTOR
Wantland L. Sandel, Jr.
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5685

STAFF ASSISTANT
Diane Livingston
750 North Lake Shore Drive
Chicago, IL 60611
312/988-5701

RECEIVED AUG 1 1 1987

August 5, 1987

CONFIDENTIAL

Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: RICHARD L. VOORHEES
United States District Court
Western District of North Carolina

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Richard L. Voorhees for appointment as Judge of the United States District Court for the Northern District of Texas.

Our Committee is unanimously of the opinion that Mr. Voorhees is "Qualified" for this appointment.

Sincerely,

Robert B. Fiske
ROBERT B. FISKE, JR.
Chairman

cc: All Committee Members

CONFIRMATION HEARING ON: DONALD E. ABRAM, KARL S. FORESTER, AND CHARLES R. BUTLER, JR.

WEDNESDAY, JUNE 29, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, the Hon. Patrick J. Leahy (acting chairman) presiding.

Also present: Senators Heflin and Thurmond.

Staff present: Duke Short, minority chief investigator; Steven S. Metalitz, chief nominations counsel; Andrew Rainer, investigative counsel; Melissa Balaban, nominations clerk (majority); and Melissa Riley, nominations clerk (minority).

Senator **Leahy** [presiding]. The committee will come to order.

This morning, the Judiciary Committee will hold its 31st hearing in this Congress to consider nominations to the lower Federal courts. Today, we will take testimony on three nominations to the U.S. District Courts, on Magistrate Donald Abram, for the District of Colorado, Karl Forester, for the Eastern District of Kentucky, and Charles R. Butler, Jr., for the Southern District of Alabama.

As we normally do, we will hear first from Senators and Representatives who wish to introduce nominees to the committee. Of course, just before I yield to my distinguished colleague and good friend from South Carolina, Senator Thurmond, let me just note for the record, as we always do at this point, that all three nominees before the committee this morning have completed extensive questionnaires on their qualifications, experience and financial situation. The publicly available portions of these questionnaire responses will be printed in the record of this hearing. We will also keep the record open for follow-up questions to the nominees and for additional questions that may be submitted by members of the committee who are unable to be present this morning. We will also include in the record the complete introductory statements of Senators and the written testimony submitted by the witnesses.

I would also like the record to reflect that this is the last hearing for which the committee will be assisted by Melissa Balaban, who is our nominations clerk. Now, she has very capably been in this position since last November. She is leaving to enter law school, at the University of Southern California.

We thank Melissa for her services and wish her the best of luck in her future endeavors, and I for one am envious. I would not mind going off to be at the University of Southern California for a year or so, ~~in law~~ school. In fact, some of my colleagues would be delighted to buy me a ticket, one way. [Laughter.]

With that opening, Mr. Chairman, I will yield to you.

Senator THURMOND. Thank you, Mr. Chairman.

We are very pleased to have these nominees here this morning: Mr. Donald E. Abram, of Colorado, who is here with Senator William L. Armstrong, and who has ardently pushed him. I understand Senator Wirth has sent a slip approving him.

I want to congratulate you for having Senator Armstrong's ardent support. I also commend you for having been appointed by the President. You are a magistrate now and you have already had experience trying cases, and I think you would make an excellent judge.

We are glad to have Senator Ford and Senator McConnell. They are both very able Senators. One is a Democrat and one is a Republican, so I think Mr. Forester is fortunate to have bipartisan endorsement here by both of these people.

From Alabama, we have Charles R. Butler, Jr. We have on this committee a very able member, Senator Heflin, who I am sure supports him ardently and also the other Senator, both of whom have approved, I believe. In addition, we have Rep. Sonny Callahan who is going to testify in his behalf. I congratulate him, too, on the support he has and his appointment by the President.

Thank you very much, Mr. Chairman.

Senator LEAHY. Thank you, Senator Thurmond.

Senator Heflin, did you have any opening statement that you wish to make?

Senator HEFLIN. No, not as to the matter as a whole. I would like to make some remarks about Mr. Butler at the proper time.

Senator LEAHY. Thank you very much.

Senator Armstrong, I wonder if you might be good enough to bring Donald Abram forward. What I am going to do is have you introduce him to us and then have Senator Ford and Senator McConnell introduce Mr. Forester, and then Rep. Callahan introduce Mr. Butler, and we will begin the hearing.

STATEMENT OF HON. WILLIAM L. ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator ARMSTRONG. Mr. Chairman, I am grateful to you for the opportunity and the privilege of presenting Magistrate Donald Abram to the committee, and may I say that I am particularly grateful to you for having this hearing and moving expeditiously on it.

I previously discussed with the committee, both formally and informally, the need we have to get some judges confirmed out in Colorado and to help us with the backlog, and so I want to add a special word of appreciation for your promptness in doing so.

Mr. Chairman, President Reagan has nominated Magistrate Abram, and I am very pleased and warmly endorse this nomination and to recommend to the Judiciary Committee approval of the nomination.

Don Abram is not only qualified, he is more than qualified to be a Federal district judge. The American Bar Association has reviewed his qualifications and have found him to be qualified. A committee of lawyer friends of mine have looked at his credentials and recommended him to me and I in turn to the Justice Department.

Mr. Chairman, far beyond that, let me say that for over 20 years that I have known Don Abram, I have known him to be a man of character and ability and achievement. Long ago, when he was a high school student, his potential for leadership began to show itself. He graduated first in his high school class. He was a top graduate of the University of Colorado. He graduated second from the University of Colorado Law School and, while in law school, served as managing editor of the Law Review.

Following his graduation from law school and being admitted to practice of law, he was a private practitioner, specializing in the field of insurance liability. He became a partner of his firm and then, in 1975, was selected to serve as a judge of the State district court and served on the district bench from 1975 to 1981.

Currently, as you know, Mr. Abram is a U.S. Magistrate for the Federal District of Colorado. In addition to his day-to-day service as magistrate, Donald Abram has served with distinction in a number of positions of leadership in his profession.

He is the treasurer of the National Council of U.S. Magistrates, he is first vice president of the Colorado Bar Association, he has been in the past chairman of the Juvenile Judges of Colorado, he is a lecturer on the subject of Federal procedures at the Denver University Law School, a member of Legislative Committees and Supreme Court commissions on grand jury reform, mental health care, reorganization of the State court system, and legal and judicial continuing education, and a member of the board of directors of the Pueblo Legal Services.

All of these over the last 20 years and many other hallmarks of his accomplishments and leadership prompt me to think that he will serve with great distinction as a member of the Federal court in Colorado.

Let me also point out that, even beyond the scope of his contribution to our State and country in the practice of law, as a judge and as a Federal magistrate, everything about his life exemplifies commitment and service.

Don Abram served for 3 years in the U.S. Navy, followed by 25 years of service in the U.S. Naval Reserve. He served as a member of the Pueblo City Council and served as the mayor of Pueblo. He was a president of the Pueblo Goodwill Industries, Pueblo Sertoma, Pueblo United Fund and the Pueblo County Navy League. He served as chairman of School Planning and Community Action Committees.

Not surprisingly, he has received many awards, including the Colorado Jaycee Distinguished Service Award and the Pueblo County Bar Association Award.

Mr. Chairman, I would like the entirety of my statement to be inserted in the record, and I would also ask unanimous consent of the committee to insert in the record a letter, dated November 19, 1987, from Judge John Kane, to the Chief of the Federal District Court, Judge Sherman Finesilver.

I would like to quote just two paragraphs from that letter, which I hope will be inserted in the record in its entirety. This is what Judge Kane wrote to Judge Finesilver in November of last year:

> I write to state that Magistrate Donald Abram is deserving of the highest commendation and recognition for outstanding service. Time and again, counsel in cases assigned by me to him have stated in pleadings and on the record that he has been singularly instrumental in effectuating settlements and in reducing controversies on issues in cases which cannot be settled. His handling of discovery disputes is likewise of excellent quality.
>
> I don't know what kind of award might be available, but Magistrate Abram deserves the highest for consistently performing above and beyond the call of duty. In every instance, he has been more than favorably compared by lawyers to other magistrates throughout the country. Likewise, court personnel, law enforcement officers and probation personnel comment about the great respect they have for him. He is indeed a tremendous credit to our court.

That letter, Mr. Chairman, was written not in anticipation of this hearing, but just as a reflection of the admiration which Judge Kane had at that time and continues to have of Magistrate Abram.

Senator **Leahy**. Without objection, that letter and your full statement will be made part of the record.

Senator **Armstrong**. Mr. Chairman, again my thanks. I recommend Magistrate Abram, not with the sense that he will be an average judge, but when confirmed by the Senate he will serve with distinction and will really make an outstanding contribution on the Federal bench in Colorado.

Thank you.

[The statement of Senator Armstrong follows:]

Statement by Senator William L. Armstrong

On The Nomination of Magistrate Donald E. Abram
To The United States District Court of Colorado

Senate Judiciary Committee
June 29, 1988

I congratulate the Senate Judiciary Committee for scheduling this hearing on the nomination of Mr. Donald E. Abram, President Reagan's nominee to serve on the United States District Court for the District of Colorado.

I support President Reagan's nomination of Mr. Abram. I urge the Senate Judiciary Committee to promptly act on his nomination.

Mr. Chairman, Mr. Abram is more than qualified to serve as a federal district court judge. As you know, President Reagan, the Department of Justice, and the American Bar Association have determined that Mr. Abram is qualified to serve as federal district court judge. Mr. Abram's credentials and experience prove his worthiness.

Mr. Abram graduated first in his high school class, was a top graduate from the University of Colorado and graduated second from the University of Colorado Law School. While in law school, he served as managing editor of the Law Review.

After law school, Mr. Abram worked 12 years in private law practice where he specialized in insurance liability. He became a parter of the firm. Between 1975 and 1981 he served as a State District Court Judge. Currently, Mr. Abram is a United States Magistrate for the federal district court in Colorado.

Mr. Abram extensively participates in legal and judicial activities. He has served in the following positions:

* Treasurer, National Council of U.S. Magistrates;
* First Vice President, Colorado Bar Association;
* Chairman, Juvenile Judges of Colorado
* Lecturer, federal procedures at Denver University Law School
* Member of Legislative Committees and Supreme Court commissions on grand jury reform, mental health care, reorganizing state courts, and legal and judicial continuing legal education.
* Member, Board of Directors, Pueblo Legal Services

While his legal accomplishments are impressive, what is refreshingly noteworthy is Don Abram's extensive commitment and service to his country and his community. Mr. Abram served for three years in the United States Navy followed by 25 years of service in the U.S. Naval Reserve. He also served on the Pueblo City Council and once served as Pueblo Mayor. He has also been President of the Pueblo Goodwill Industries, Pueblo Sertoma Club, the Pueblo United Fund and the Pueblo County Navy League. He served as chairman of school planning and community action committees.

Not surprisingly, he has received numerous awards, including the Colorado Jaycee Distinguished Service Award and the Pueblo County Bar Association Award.

Clearly, Mr. Abram deserves prompt consideration and action. This is particularly so in light of the urgent need to fill Colorado judicial vacancies. The effort to fill this particular vacancy has met unusual delay. The judgeship to which Mr. Abram has been nominated became vacant July 10, 1984...four years ago. The Administration delayed 30 months in submitting a nomination, and more than 10 months lapsed before a hearing was scheduled. Subsequently, the nominee withdrew his nomination.

President Reagan then accepted the Justice Department's recommendation that Mr. Donald E. Abram be nominated to fill this long vacant post. The Senate Judiciary Committee received this nomination on February 19, 1988.

Regrettably, this is not the only vacancy in this district. A second vacancy has existed since May 14, 1985. Taken together, these vacancies have existed 86 months, or nearly seven years. One federal judge, Judge John L. Kane, has said more than 1,500 cases could have been heard if these vacancies had been filled promptly. Judge Kane added, "Since there are always at least two sides to a case, 3,060 people and businesses have been deprived of their day in court."

I urge the Senate Judiciary Committee to promptly act on the nomination of Donald Abram to fill this vacancy on the federal district court in Colorado.

with Armstrong's statement

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
C-550 UNITED STATES COURTHOUSE
DENVER, COLORADO 80294-3589
(303) 844-2527

JOHN L. KANE, JR.
JUDGE

4
NOV 1987
RECEIVED

MEMORANDUM

TO: Chief Judge Finesilver

FROM: Judge Kane JLK

DATE: November 19, 1987

I write to state that Magistrate Donald Abram is deserving of the highest commendation and recognition for outstanding service. Time and again, counsel in cases assigned by me to him have stated in pleadings and on the record that he has been singularly instrumental in effectuating settlements and in reducing controversies on issues in cases which cannot be settled. His handling of discovery disputes is likewise of excellent quality.

I don't know what kind of award might be available, but Magistrate Abram deserves the highest for consistently performing above and beyond the call of duty. In every instance he has been more than favorably compared by lawyers to other magistrates throughout the country. Likewise, court personnel, law enforcement officers and probation personnel comment about the great respect they have for him. He is indeed a tremendous credit to our court.

cc: Honorable Donald E. Abram

Senator **Leahy**. Thank you very much.

Mr. Abram, you come highly recommended from our friend, Bill Armstrong. I know that Mrs. Abram is here, and I just think this obviously has to be a very important moment in your life, and I want it on the record. She is here with you, I wonder if you might introduce her to the committee and anyone else who may be here with you today.

Mr. **Abram**. Thank you, Senator. I would like to introduce my wife, Janet Abram.

Senator **Leahy**. Mrs. Abram, we are so happy to have you here today.

Do you have any other family members here?

Mr. **Abram**. No.

Senator **Leahy**. Thank you very much. I ask you just to step down for a moment, so that we can have Mr. Forester.

Mr. Forester, you are here well represented. You understand that the real power of the Senate rests in the Rules Committee, not in the Judiciary Committee or the Appropriations Committee or the Majority Leader's committee or anything else, and you have the chairman of the Senate Rules Committee with you, Senator Ford. And I have the added pleasure of my colleague from Kentucky who serves on the Agriculture Committee with me, Senator McConnell, so you are well represented.

Senator Ford, I will yield first to you. I should also mention that Senator Ford and I came here to the Senate at the same time. We both had hair then and he still does.

Go ahead, Senator Ford.

STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator **Ford**. And mine is still black. [Laughter.]

Thank you, Mr. Chairman, for those I think complimentary remarks.

Mr. Chairman, it is my pleasure to introduce to the Judiciary Committee today Mr. Karl Spillman Forester, the nominee to the Federal District Court for the Eastern District of Kentucky.

I commend the committee for scheduling this hearing today, in part because there is an overwhelming need to fill the existing judicial vacancy in the eastern district of my State.

I believe Karl Forester is a fine nominee. In 21 years of private practice in Harlan, Kentucky, Mr. Forester has developed a solid reputation for his legal skills and integrity. His experience, character and judicial temperament appear to me to make him well-qualified for this position.

Mr. Chairman, I believe the non-partisan manner in which Mr. Forester was chosen is also noteworthy. The Federal Judicial Selection Committee of Kentucky has played a major role in the selection of Federal judges in Kentucky since 1976. This non-partisan commission, which has members on it chosen by myself, my colleague Senator McConnell, and the Kentucky Bar Association, recommended three individuals whom it felt were the best qualified among the many who sought this vacancy.

Mr. Forester was selected by the President from a list of 3 and his nomination was then forwarded to the Senate and we have it before this body today.

I believe the objective manner in which Mr. Forester was chosen is a healthy process for selecting judicial nominees. I also believe that the scrutiny which Mr. Forester has already come under speaks well for his qualifications.

As a final note, Mr. Chairman, I would again stress to the committee the urgent need in eastern Kentucky for filling this vacancy. This position came open because of the disability of one of our fine senior judges who now has part-time senior status. A second Eastern Kentucky judge has been seriously ill and his workload substantially curtailed. As a result, the caseload has increased for other judges in the district, with a significant backlog of cases continuing to develop.

Many legal practitioners in eastern Kentucky remember well the logjam that existed in 1982. Only 6 years ago, 39.5 percent of all pending civil cases were over 3 years old in the eastern district. This was the second worst rating in the country.

Chief Judge Eugene E. Siler, Jr. is deserving of much credit for turning this situation around. Today, only 7 percent of the civil matters have been pending for this long. This figure is slightly better than the national average for district courts.

I think it is clear that this impressive turn-around has improved the administration of justice in eastern Kentucky. Many are now fearful, Mr. Chairman, that the current situation will cause a reversal of this trend and set the district back again several years.

It is for this reason that I have come before you today, to compliment you for holding this hearing and to support this nominee wholeheartedly. And I would commend the committee to move quickly with the nomination of Karl Forester.

Thank you, Mr. Chairman.

Senator **Leahy**. Thank you very much, Senator Ford. I appreciate that strong endorsement, and I would note that you have urged this hearing and urged us to put the time in and we are happy to do it.

Senator McConnell, you also have been urging this hearing, and I yield to you, sir.

STATEMENT OF THE HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator **McConnell**. Thank you, Mr. Chairman.

I will not repeat all that my colleague has said, but I simply ask that my statement appear in the record at this point and then make a couple of observations.

Senator **Leahy**. Without objection, it is so ordered.

Senator **McConnell**. I have known Karl Forester for over 20 years. We were in law school together at the University of Kentucky back in the sixties. He was an outstanding student in those days. He has been an outstanding practitioner of the law in the intervening time prior to this nomination, and, as Senator Ford pointed out, Karl got here in a very bipartisan way.

We have a judicial commission that consists of Republicans and Democrats and appointees by the bar associations. A number of lawyers from all over eastern Kentucky applied for this position, and Karl has made it through a lot of stiff competition to get to the place where he is today, and that is a credit to his legal talent and a predictor, I think, of what kind of judge he will make on the eastern district of Kentucky.

As Wendell said, we have a genuine crisis in that part of our State. Two of the five judges have been essentially unable to function for quite some time. The backlog is enormous. We have a genuine crisis of litigation in the Federal courts in eastern Kentucky and, Mr. Chairman, I particularly thank you and Senator Thurmond for your willingness to move on this nomination. We have a genuine crisis.

Karl Forester, in my judgment, will be an outstanding Federal judge, a credit to the profession, and someone that we can all be proud of, and it is certainly my pleasure to be here today to present him to the committee.

Thank you.

[The statement of Senator McConnell follows:]

STATEMENT

BY SENATOR MITCH McCONNELL
BEFORE THE
SENATE JUDICIARY COMMITTEE
HEARING ON
NOMINATION OF KARL S. FORESTER TO FEDERAL DISTRICT COURT

WEDNESDAY JUNE 29, 1988

Good morning. I would like to thank my friend and colleague from Vermont, Senator Leahy, for the opportunity to speak on behalf of the distinguished, experienced, and widely supported nominee for the Federal Eastern District Court in Kentucky, Karl S. Forester.

The nominee is no stranger to the Eastern District. He was born and raised in Harlan, Kentucky; after receiving his Juris Doctor from the University of Kentucky Law School--my alma mater--Karl returned to practice law in Harlan, where he resides today. In 1975, after a decade of successful practice with other law firms, Karl Forester started his own firm which has grown into one of the most active and respected law firms in the Eastern District.

Because of his professional qualifications and fine character, the American Bar Association recently voted unanimously to give Mr. Forester a "qualified" rating to serve on the Federal bench.

At home in Eastern Kentucky, Mr. Forester is well-respected and liked by the area's leaders in business, labor, and the law.

Throughout his professional career, Mr. Forester has demonstrated a deep commitment to justice, fair play, and public service. His concern for the community is evidenced by his unselfish donation of time to representing indigent defendants and his volunteer service to Harlan County flood victims in 1977.

Further, Mr. Chairman, I would like to call special attention to the way in which Karl Forester was chosen as the nominee for the Eastern District Court vacancy. When I came to the Senate in 1985, Senator Ford and I agreed to continue a unique Kentucky tradition: the Kentucky Federal Judicial Selection Commission.

This bipartisan panel of legal and community leaders takes full responsibility for reviewing applications for federal judicial vacancies, interviewing selected candidates, and recommending a handful of especially qualified candidates to the President for his final decision. The Commission takes its responsibility very seriously and does an excellent job each time; the nominee before this Committee today is no exception. Overall, I am pleased to say that Kentucky's special way of selecting candidates for its federal courts is ensuring that candidates' qualifications--not political considerations--are what count.

Finally, I would like to urge my colleagues to act immediately on this nomination. The Eastern District Court has been handicapped for over two years because of the health problems of one of its judges. Now that this judge has retired to part-time status as of November 1987, the Court needs a new member more than ever. A considerable backlog of cases has developed, and the remaining judges have been pressed to the limit by the increased workload.

In closing, let me again express my gratitute to the Committee for holding a hearing on this urgent nomination. I am pleased to present a nominee like Karl Forester who is qualified, familiar with the District, widely respected, and non-controversial; and I strongly urge the Committee to expedite his confirmation.

Thank you.

Senator **Leahy**. Thank you both very much.

Mr. Forester, do you have family or friends here that you would like to introduce so that it will be on the record?

Mr. **Forester**. Yes, sir, my wife is here, Tracy.

Senator **Leahy**. Mrs. Forester, welcome.

Mr. **Forester**. My son Todd, my daughter Mary Beth, and my friend Warren Scoville, from back home, my friend Dr. George Curlin, who is with the National Institute of Health and has been for 22 years.

Senator **Leahy**. It is good to have you here.

Senator **Ford**. Mr. Chairman, I think a man's family indicates the kind of nominee we have here today, and you could not find a better looking family.

Senator **Leahy**. Wendell, you are correct; and I cannot but think, I know what a proud day it is for both Mr. Forester and his wife. I think it is especially nice that your children are here. They are certainly a delightful looking pair, I am sure never give their parents any cause for concern or worry, always obedient and dutiful. Say yes, you are not under oath yet. [Laughter.]

I know how proud you must be to have them here, but I expect that they are equally proud to be here with you and we welcome you all very, very much.

Mr. **Forester**. Thank you.

Senator **Leahy**. We are going to soon have a vote, but I would ask, before we do that, so that we can get down to the hearing, if Congressman Callahan and Mr. Butler would come forward.

Congressman, it is good to see you over here, sir.

STATEMENT OF HON. SONNY CALLAHAN, A MEMBER OF THE HOUSE OF REPRESENTATIVES FROM THE STATE OF ALABAMA

Mr. **Callahan**. Thank you, Mr. Chairman, for permitting me to appear before your very distinguished committee today and to introduce my constituent, Randy Butler, who has been nominated by President Reagan to fill the vacancy on the District Court for the Southern District of Alabama.

Earlier this year, this panel and the Senate confirmed Judge Emmett Cox, of Mobile, for a seat on the U.S. Court of Appeals in Atlanta. This opened the vacancy in the District Court for the Southern District of Alabama and created a substantial backlog of work due to the fact that the court is without an adequate number of judges. Therefore, I commend you for having this hearing today and request that this committee act as expeditiously as possible.

I will be brief, Mr. Chairman, and submit my statement for the record, so that you can make your vote.

Senator **Leahy**. It will be made part of the record.

Mr. **Callahan**. We are proud of the fact that we have from our State our senior Senator of Alabama, Senator Heflin, who sits in your committee, and Senator Heflin's judicial credentials were impeccable prior to his election to the Senate, and I know his experience and leadership has been extremely helpful as this committee has carried out its important responsibilities.

And we are proud to bring before this panel today another outstanding individual whose experience will make him an outstanding judge for the people of Alabama.

Randy Butler received his undergraduate degree from Washington and Lee University, in Lexington, Virginia. He served 2 years in the U.S. Army as a first lieutenant. He was honorably discharged in 1962 and began the study of law from the University of Alabama in 1966.

His legal and judicial experience is exemplary. He served as Assistant Public Defender, and was elected District Attorney of Mobile County. He served as Special Assistant Attorney General, representing the State of Alabama Highway Department and the Department of Conservation and Natural Resources.

As a private attorney, he has also had broad experience with a wide variety of cases that he has handled in his more than 16 years of private practice.

I know, Mr. Chairman, that your committee takes its judicial responsibilities very seriously, and I know this confirmation hearing will closely examine the credentials and qualifications of Mr. Butler to sit on our district court.

As one who has had the opportunity to personally watch him serve the public with distinction and honor throughout his legal and judicial career, I strongly believe that you will find Randy Butler to have the requirements needed to be an outstanding district judge for the people of South Alabama.

I, again, appreciate your permitting me to present Mr. Butler to you this morning and I will submit my statement for the record, in the interest of time.

Thank you.

Senator **Leahy**. Thank you very much, Congressman. I appreciate that.

Mr. Butler, do you have family or friends that you would like to introduce?

Mr. **Butler**. Yes, Mr. Chairman, I do. I would like to introduce my wife Jackie, my sister-in-law Susan Warren, my son Warren, his girlfriend, my friend, Kathryn Williams, my law partner and good friend Joe Wullivan, and my good friend Kendall Dexet, from Mobile.

Senator **Leahy**. It is good to have you here. There are not too many folks left back home, are there? [Laughter.]

I know it is a proud moment for all of you, too, and I welcome you all very much. Congressman, I know that you have a busy schedule ahead of you over in the House side, and certainly do not feel that you have to stay. We will try not to be too rough to your constituent.

Mr. **Callahan**. I appreciate that, Senator.

Senator **Leahy**. Thank you, sir, for being here.

Senator **Thurmond**. Mr. Chairman, I have another committee meeting and I may not be here for the entire hearing. I just want to be on record as favoring all of these appointees. I have looked at their records and feel that they are well qualified and I intend to support their confirmation.

I also would like to ask unanimous consent to place in the record a memorandum submitted to me by Senator Simpson. I designated him to work with you and your staff about the judges and trying to prevent any further delay, and he has worked out a memorandum and he says it also has the approval of Senator Kennedy and Senator Metzenbaum, and I ask that that be placed in the record.

[Memorandum follows:]

Senator **Leahy**. Without objection, and I do appreciate the work of Senator Simpson. We have been trying to move these judgeships along and he has been very helpful in that regard. Indeed, this is the 31st hearing we have had and we will complete at some point today the hearings on these three.

I mentioned to the people here that we are going to start and stop a couple of times during the hearing because of votes, but all three of these nominees will be completed at some point today, and I appreciate the help of the distinguished Senator from South Carolina in helping to make that possible.

I would also note for each one of you, you will be asked a question at some point, which I call the Thurmond memorial question. It is an excellent one—one that goes into the whole question of judicial temperament. It is one that Senator Thurmond asked long before I came here, and it is one that every judicial nominee should be asked and always are asked here. If I can paraphrase the distinguished Senator from South Carolina, he reminds every Federal judge nominee of the enormous power they have and how that should be exercised in the courtroom with plaintiffs and defendants alike and all the people that have to appear before him. So if you are not here, Strom, I will make sure to ask that question, which I think is probably the most important question that could be asked of any judicial nominee.

Senator **Thurmond**. Thank you.

Senator **Leahy**. I just want to make sure that everybody knew that that comes originally from Senator Thurmond, but it is an important one.

Why do we not start with Mr. Abram, if you would step forward, please. Will you raise your right hand: Do you solemnly swear that the testimony you give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Abram**. I do.

TESTIMONY OF DONALD E. ABRAM, OF COLORADO, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLORADO

Senator **Leahy**. Mr. Abram, did you have an opening statement that you wish to make?

Mr. **Abram**. I appreciate both Senators, Senator Wirth and Senator Armstrong, encouraging the committee to ask a hearing on me and to be here today, and I am anxiously awaiting your questions at this time.

Senator **Leahy**. Thank you.

Now, we talked with a number of lawyers and judges in Colorado about this and they use the same phrase, many of them do, to describe your judicial performance. They say you are a hands-on judge, and that in itself is certainly a positive attribute.

Some raised a negative side as well, and I would like to go into that. We have been told that you work hard to find out the facts in each case and reach a just result, and certainly everybody would want that in a judge. But as the byproduct of that approach, some people have said that you have encountered problems, in some instances serious problems in managing your docket and deciding cases efficiently.

I know that you are aware, I think you have been told of some of these criticisms, that they date from the days when you served as a judge on the State District Court in Pueblo during the late seventies.

Now, I want to just go back over that. When you first became a State court judge in Pueblo in 1975, what kind of cases were you assigned?

Mr. **Abram**. I took the bench in August 1975 and initially I had civil cases, felony criminal cases. It was shortly thereafter, about December of 1975, that the chief judge assigned me to the juvenile, mental health, probate and domestic relations, and I still maintained the caseload which I had from the civil and the felony that had been previously assigned to me.

As it turned out, during that period of time, then, I actually, of new case filings in 1975 had been 32 percent of the caseload of the 6 judges; in 1976 nearly 38 percent of the caseload; in 1977, of the new filings, I had a 41 percent caseload; and by 1978 a 42.5, and in 1979 43.7. That is all new cases that were filed, so I was getting by 1979 new cases, over 2,000 cases a year, new cases.

To address that issue, I had no law clerk, I had a part-time deputy clerk and a court reporter. In order to address that issue, because both in the mental health and the juvenile cases are permitted by State law jury trials and the appointment of free counsel. As a result, I met with the bar associations, I met with the county attorney, the public defender, the district attorney, and we set up a program to address that type of backlog and that type of heavy caseload.

We started a procedure in 1977 where we would select or begin to select two juries on a Monday morning. We used a federal system. We sent out questionnaires to each one of the jurors. The attorneys received a copy of the answers to those questionnaires and were, not to ask questions on voir dire concerning those questions that were in the questionnaire.

Each attorney then was limited to 30 minutes of voir dire, rather than unlimited. By using that system and the cooperation of the bar, in 1977 we tried 17 jury trials, in 1978, 18, in 1979, 26, and by 1980 I tried 60 jury trials in 1 year. I had more jury trials than four of the six judges put together.

It was by court management that we were able to address those problems. There was a complaint by the chief judge that I was providing jury trials on the mental health cases, because the prior judge had not done that, but the State law provides not only for jury trials, but the appointment of free counsel, and I followed the statute.

In order to provide the counsel, I worked out with the Pueblo County Legal Aid a contract by where they represented the mental health patients before the court, rather than going to the bar pro bono, in order to buy some expertise in the mental health area.

As I indicated, the system worked. By close management and hard work and the cooperation of the bar, we were able to try 60 jury trials in my last full year as a judge on the District Court bench in Pueblo.

By the way, I have statistical information here that was prepared many years ago by the court administrator of the court statistics and the jury commissioner of the number of jury days of trials and the number of trials, and I am certainly more than happy to provide that to the Senate committee for your review.

Senator **Leahy**. We will make that a part of the record.

[The information referred to follows:]

2 (Judge Abram) — include

STATISTICS PUEBLO DISTRICT COURT

Fiscal Years	1975	1976	1977	1978	1979	1980	
CASE FILINGS BY YEAR FOR JUDGE ABRAM							
Juvenile	899	1120	1295	1122	1301	709	
Mental Health	249	250	242	359	377	412	
Probate	389	283	303	375	399	368	
Domestic Relations	0	0	0	0	0	220	
TOTAL Division F	1537	1653	1840	1856	2077	1709	
Pueblo District Court TOTAL	4732	4325	4497	4370	4750	5007	
Division F Caseload %	32.5	37.9	40.9	42.5	43.7	34.1	
ACTIVE CASES ON DOCKET BY YEAR FOR JUDGE ABRAM							
Juvenile	1684	2014	2038	2334	3094	1502	
Mental Health	257	380	573	582	627	692	
Probate	248	829	829	938	1019	1074	
Domestic Relations	0	0	0	0	0	459	
TOTAL Division F	2889	3223	3440	3854	4740	3727	
Pueblo District Court TOTAL	8321	9307	8985	9149	10339	10642	
Division F Caseload %	34.7	34.6	38.3	42.1	45.8	35	
Cases Terminated by Division F		1319	1623	1442	1191	2722	
JURY TRIALS FOR JUDGE ABRAM							
Calendar Years			1977	1978	1979	1980	*1981
Jury Trials			14	18	26	60	29
Days in Trial			34	38	42	87	45
*(Jan.-Aug.)							

No statistics were available for non jury trials which constitute the majority of hearings before the Court.

MAGISTRATES STATISTICS 1988
JANUARY 1 - MAY 31, 1988

	Magistrate H. Schauer	Magistrate D.E. Abram	Magistrate R. Harvey	Total Cases
New Civil Cases Assigned:	81	147	99	327
New Prisoner Cases:	10	66	9	85
TOTAL NEW CASES:	91	213	108	412
Civil Cases Disposed of:	88	146	158	392
Prisoner Cases Disposed of:	11	62	8	81
TOTAL CASES DISPOSED OF:	99	208	166	473

STATISTICS PRIOR YEARS

1987				
TOTAL NEW REFERRALS:	253	515	254	1022
TOTAL CASES DISPOSED OF:	284	472	302	1058
1986				
TOTAL NEW REFERRALS:	337	390	325	1052
TOTAL CASES DISPOSED OF:	346	415	345	1106
1985				
TOTAL NEW REFERRALS:	319	324	381	1024
TOTAL CASES DISPOSED OF:	357	360	327	1044

Senator **Leahy**. One of the complaints that was made was that in the juvenile docket there were unnecessary hearings, there were hearings that went on far longer than they should have. If you have that question in mind—that bell indicates that I have 5 minutes to get to the floor for a vote and I am afraid we will not have time for the answer in doing that, so we will stand in recess.

There will be another vote immediately after this vote. This is a vote to establish a quorum. There will be another one on cloture immediately after, and subsequent to that Senator Heflin and I will be back here to pick up on the hearings. So we will stand in recess until the two votes are over.

Mr. **Abram**. All right, sir.

Senator **Leahy**. Thank you. I just wanted you to know what the next question was going to be.

[Short recess.]

Senator **Heflin** [presiding]. The committee will come to order.

Magistrate Abram, I am reading questions now that have been prepared and so I will ask you these on behalf of the committee.

We are told that there are many complaints from lawyers in Pueblo about your handling of the juvenile docket in particular. These lawyers complained about unnecessary hearings, hearings that went so far longer than they should have, and basically a failure to administer the juvenile docket efficiently. Were you aware of these complaints at the time?

Mr. **Abram**. Senator, that is the first time I ever heard of such a complaint. When I came up for retention by the bar, I had 82 percent, which was the second highest vote of the bar.

Senator **Heflin**. Well, how do you respond to these complaints?

Mr. **Abram**. Our responsibility under the law in Colorado was that every child who is removed from the home, there must be a hearing within 48 hours, and I complied with that law. Counsel must be appointed, a plan prepared by the court for the parents and the child, to return the child to the home, and that was reviewed every 90 days, and I complied with that law.

We had hearings every 90 days to determine whether the child could or could not be placed back in the home and whether the plan was working. They were entitled to jury trials in dependency cases and delinquency cases, and we had jury trials in those cases.

Senator **Heflin**. Well, as time went on, did you in your judgment administer the juvenile docket more efficiently?

Mr. **Abram**. Yes, sir, and as I think I indicated in the documents I have given to you, as you can see, when you have a new caseload of about 2,000 cases a year, that is a management problem, when you have no law clerk. That is why in 1977 and 1978 I met with the bar and we addressed that problem, and by 1980 to 1981, you will notice that we were eliminating over 2,000 cases a year, and 60 jury trials, and we were addressing that problem. We corrected the management difficulties.

Senator **Heflin**. Was the issue of your administration of the juvenile and mental health docket a source of friction with your fellow judges?

Mr. **Abram**. It certainly was with the chief judge, yes, sir.

Senator **Heflin**. It was?

Mr. **Abram**. Yes, sir. It was because I was carrying 42 percent of the case docket, in fact nearly 43 percent. I requested that that be separated out and divided equally among the rest of the judges who were only carrying 58 percent of the caseload. The chief judge refused to do that and then I requested relief from the Chief Justice of the Supreme Court.

The following year, another judge was assigned to help in the juvenile and the mental health caseload.

Senator **Heflin**. According to information that the committee has received, the committee has been told that the judge who handled juvenile and mental health case before you ascended to the bench in Pueblo handled these matters with time to spare to assist other judges in other kinds of cases. We have been told that the judge who took over this docket after you left also was able to administer it more efficiently. We were told that some of your fellow judges felt some resentment and perceived that you were not shouldering your share of the overall load of cases. Do you know if these assertions are true, or are they false or do you have some comments on them?

Mr. **Abram**. I think the record speaks for itself, Senator. I was carrying 42 percent of the caseload, and the other judges were carrying 58 percent. I do not know what the judge did who followed me, or whether she gave jury trials and whether she complied with the statute. I complied with the statute.

Senator **Heflin**. One judge that the committee talked to put it this way, he thought your approach to the juvenile cases was more that of a social worker than a judge. Do you recall hearing that criticism, and is there any merit to it?

Mr. **Abram**. I never heard that criticism. I think there is no merit. On the other hand, a juvenile judge in many ways is a social worker. As I indicated, it is mandatory by statute that you develop a social plan to bring the child back into the home. We developed those plans with social services, those were reviewed every 90 days by hearings, as required by the statute.

Senator **Heflin**. One judge has told the committee that he thought that you got too personally involved in the cases to be an effective and efficient judge. Have you heard that criticism before, and what do you think of it?

Mr. **Abram**. I never heard the criticism before, and I think it is inaccurate. I did my job as a judge.

Senator **Heflin**. Another judge told the committee that it had been brought to his attention that you gave long lectures to the juveniles who appeared before you, "sermons," he called them, which turned short hearings into very long ones. Do you recall hearing that criticism and is there any substance to it?

Mr. **Abram**. I never heard that criticism and, if that was by a judge, I do not know why a judge would be cutting in my courtroom, so I do not know how he would know that. Certainly I lectured delinquents.

Senator **Heflin**. Of course, a judge in a juvenile proceeding does have a different role from a judge in an ordinary civil or criminal case. These can be tough cases and a judge wants to do what he or she can to try to get a juvenile to amend his ways and avoid a life of crime. More than one judge noted that you can burn out on these cases rather quickly. Do you think that you got burned out on a steady diet of juvenile cases, along with mental health commitments which can also be difficult and emotional matters?

Mr. ABRAM. Yes, sir, and that is one of the reason I asked the chief judge to divide the caseload, so that I could get a more normal caseload. As I indicated, that was done in 1980 or 1981, and I did get an additional caseload of domestic relations and civil cases.

Senator HEFLIN. Did you ever ask to be relieved of some or all of your juvenile and mental health cases so that you could vary your caseload with some other kind of case?

Mr. ABRAM. Yes, sir, I certainly did. I just so indicated.

Senator HEFLIN. We are told that because of the difficulties you were experiencing in administering your docket, some of your other subject matter areas of jurisdiction were reassigned to other judges, so that your portion of juvenile and mental health cases actually increased over time. Is that your recollection?

Mr. ABRAM. No, sir. Again, I have given you the statistics, and I think they speak for themselves.

Senator HEFLIN. We have gone into this in some detail, for two reasons. First, there are two sides to this story, and the committee wants to make sure that your side is on the record. Second, the committee is concerned about these comments on your performance as a State court judge.

In my experience, it is right for a judge to share with this committee criticism of a fellow judge, even if the judge and the nominee no longer serve together any more. In this case, we have heard the kinds of criticism that I just reviewed from several of your former colleagues on the State court bench. I emphasize that we heard no criticism of your fairness or the content of your rulings or anything of that sort, though we continually and almost invariably hear these criticisms of your efficiency, of your administrative ability, and of your ability to control your docket.

These are very important attributes for a Federal judge. If anything, they are particularly important for the Federal court in Colorado, which we know has something of a crushing caseload management problem because of the existence of three vacancies, two of which have been more than 3 years old.

Before we turn to your service as a U.S. magistrate, do you have anything else that you would like to add about your performance as a judge of the State district court in Pueblo?

Mr. ABRAM. Senator, I think that my statistics show that in fact over the 6 years I was there, the administration was correct. In fact, we improved it. I had more cases closed than any other judge in that district, and I handled more cases than any other judge in that district, and I tried more jury trials than any other judge in that district.

I think you will also see as a Federal magistrate that I presently handle over 50 percent of the magistrate caseload, because I get the job done. My policy is I have no opinions that are over 60-days old, and I do not have any that are over 60-days old. I move my cases and I move my decisions.

Senator HEFLIN. In 1981, you left the State court bench in Pueblo to become a U.S. magistrate in Denver. What we have heard about your service as a magistrate is much different than what we heard about your State court service. I am particularly struck by how many people praised your efficiency and business-like approach to cases. How do you explain this difference? Did you turn over a new leaf, or was the criticism unfair? Is your current docket one that you feel you can process more quickly?

I am going to have to leave and go vote now, so we will come back to this.

Mr. **Abram**. Yes, sir.

Senator **Heflin**. The committee will stand in recess.

[Short recess.]

[The following was subsequently supplied for the record:]

Response to Senator Heflin's Question

I was appointed a state district judge in August of 1975. Like any person in a new position, I learned to improve my skills as a judge and to manage cases as I gained experience. But in addition to experience, I twice attended the State College for Trial Judges taking the general course and the course for juvenile judges. I also attended a week course offered by the Institute for Court Management. These courses and the communication with other judges at the courses sharpened my performance as a judge and my skills to manage the case docket. This training and experience carried over to my duties as a United States Magistrate since August of 1981. As a United States Magistrate I have taken seminars yearly and again believe that I have improved my skills as a judge through training, experience and communication with other magistrates. Unlike the state of Colorado, the Congress of the United States has adequately provided staff and equipment to the federal judiciary to permit them to carry out their judicial duties.

Senator **Leahy** [presiding]. The committee will come to order.

Mr. Abram, this may seem particularly truncated, but there is a major debate on the floor and, unfortunately, the votes occur as a result.

Mr. **Abram**. I understand, Senator.

Senator **Leahy**. Can you describe the kind of cases that you now hear in your role as U.S. magistrate?

Mr. **Abram**. Yes, sir. We handle all civil cases and, as a magistrate, you are permitted to handle the initial advisements, arraignments of all criminal matters, and try misdemeanor cases and petty offense cases.

As far as the use of magistrates in Colorado, we primarily do the pretrial work and we also do the settlement discussions.

Senator **Leahy**. Do you do any jury trials?

Mr. **Abram**. We do not at the present time, although it is authorized by statute.

Senator **Leahy**. It is authorized?

Mr. **Abram**. Yes, sir.

Senator **Leahy**. And why do you not do them?

Mr. **Abram**. Our judges have felt that the more appropriate use of the magistrates is by handling settlement conferences, and in that manner about 70 to 80 percent of our cases are settled before trial.

Senator **Leahy**. Now, habeas corpus petitions make up a large part of your docket. It is true up in my part of the country, and I guess it is everywhere.

Mr. **Abram**. Yes, sir.

Senator **Leahy**. Let us take a couple of them. Particularly in the early 1980's, you were assigned a petition brought by one Vincent

Denton, an inmate in the Colorado State Penitentiary. You have had hundreds of them, and I would not expect you just to remember Mr. Denton's name——

Mr. **Abram**. Probably more like thousands.

Senator **Leahy** [continuing]. Or thousands, but this case went up to the tenth circuit twice before it was finally resolved. Let us go to the first time it went to the tenth circuit. As I understand it, and I have read the opinion in *Denton* v. *Ricketts,* you conducted some interviews in the case. You interviewed the petitioner's mother and the lawyer representing Denton when he was convicted in the Colorado State Court. As I understand it, based on the interviews, you concluded that Denton had been denied effective assistance of counsel at his trial. You recommended petition for a writ of habeas corpus be granted, and he be retried or set free.

The district court judge, Judge Carrigan, agreed with you, he granted the writ, and the State appealed to the tenth circuit and pointed out that the statute requires an evidentiary hearing, in which the State could defend; and the tenth circuit held that your interviews did not satisfy the statutory requirement for that kind of an adversarial hearing.

Now, I have been told that that is not the only case in which you used informal interviews during the adversarial——

Mr. **Abram**. That is incorrect, Senator. We had formal testimony. I never do informal interviews. We had formal testimony under oath. The ruling of the circuit——

Senator **Leahy**. With the State having a chance to cross-examine?

Mr. **Abram**. Yes, sir, they certainly did. The procedure that was complained of I think by the circuit was that there was no authority by statute for a full trial of the procedure under our local rules, without the permission of counsel. And since our district does not allow the magistrates to try the cases, it should have been tried by Judge Carrigan, rather than by the magistrate.

Senator **Leahy**. On the kind of interview method, I understand that you have gone out to the State prison with a tape recorder to interview some of the people involved.

Mr. **Abram**. They were not interviews, they are under oath.

Senator **Leahy**. Under oath?

Mr. **Abram**. Everything is under oath.

Senator **Leahy**. Do you think that is efficient use of judicial resources, rather than just ruling on the matter of law?

Mr. **Abram**. Well, where there is a factual issue or we cannot determine by the complaint whether there is a factual issue, then we must take testimony from the prisoner, with the Attorney General being present to question, and then we can determine whether or not there is in fact a factual basis for the case to go forward. If there is not, then I make a recommendation that it be dismissed as a matter of law.

Senator **Leahy**. Now, let me just go back to Denton again. In that case, you said the State was notified of your hearing or your interview or whatever?

Mr. **Abram**. In fact, I think actually that was a State police officer situation, so it was represented by private counsel, I think insurance defense counsel, if I remember correctly.

Senator **Leahy**. Was there a State prosecutor or the State Attorney General's office involved in that?

Mr. **Abram**. Counsel was involved in that. Now, who was present, I cannot remember at this time. There was cross-examination.

Senator **Leahy**. Would you recommend—I realize that most of these habeas corpus matters are just dismissed. Such was my experience as a prosecutor. As soon as somebody went to jail for any period of time, if he was in there long enough to actually type up a habeas writ and send it out, it was going to go out. In fact, once he got access to a Xerox machine, he usually just whited out the name and put in somebody else's name and kept sending them out. So most of them just got dismissed.

Would it be your view that if it appeared that it might be granted, in that case the State should be involved in an adversarial hearing?

Mr. **Abram**. Yes, absolutely. If there is a factual issue like the Denton case, it must be taken up by the district judge and a full trial given.

Senator **Leahy**. Now, I know that Senator Thurmond has talked about the fact that Federal judges sometimes find it necessary to assume continuing jurisdiction over the operations of institutions such as the prison system——

Mr. **Abram**. Yes, sir.

Senator **Leahy** [continuing]. To assure compliance with the requirements of Federal law. I understand that you have had some experience with that after you became a Federal Magistrate. Judge Matsch—I do not know if I am pronouncing that correctly or not——

Mr. **Abram**. That is correct.

Senator **Leahy** [continuing]. Assigned you to prepare a report on the status of the efforts of the Federal correctional facility at Englewood, that was supposed to bring it into compliance with the Federal Youths Corrections Act. Now, what did Judge Matsch assign you to do and what did you do?

Mr. **Abram**. I held a series of hearings. I was directed by Judge Matsch to go out and hold a series of hearings at the Federal correctional institution, and simply make a factual report. I did not make any recommendations as to whether it should be closed or not closed. I simply made findings factually, and then he entered the final order as to what he was going to do in the case.

Senator **Leahy**. Did you file the report in a timely fashion?

Mr. **Abram**. Well, I filed it in about 70 to 80 days, 70 to 90 days afterwards.

Senator **Leahy**. Did Judge Matsch consider that timely?

Mr. **Abram**. I think he did not, and that was the first year I was on the bench and I have never done that again.

Senator **Leahy**. Do you know what he did with your report?

Mr. **Abram**. Pardon me?

Senator **Leahy**. Do you know what he did with your report?

Mr. **Abram**. He is still operating under that case, so I know that it has been closed. He still has continuing jurisdiction over the Federal correctional institution at Englewood.

Now, we have closed the *Romas* v. *Land* case, which was the supervision of the State court system, based upon my hearings and recommendations. That has been closed.

Senator **Leahy**. Mr. Abram, I appreciate your being here and I also appreciate your forbearance with our procedure here today, and we thank you for coming.

We will have some questions for the record which we will get to you very quickly so as not to hold you up, and Senator Thurmond, if he or anybody else does, they will, too, but I urge all Senators, if they do have questions for the record, to try to get them in this week so as not to delay this proceeding in any way.

Thank you very much.

Mr. **Abram**. Thank you, Senator.

[Response to questions follow:]

JOSEPH R. BIDEN, JR., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE
MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 12, 1988

Honorable Donald E. Abram
United States Magistrate
U. S. Courthouse
1929 Stout Street, Room C-160
Denver, Colorado 80294-3576

Dear Mr. Abram:

In order to supplement the record of the hearing held on June 29 by the Senate Judiciary Committee on your nomination to be United States District Judge, please provide written answers to the enclosed additional questions submitted on behalf of the Committee.

Your answers should be accompanied by your attestation of their accuracy. Please deliver your answers to the Judiciary Committee in Room SD-224, Dirksen Senate Office Building, Washington, D.C. 20510. Any questions concerning this request should be directed to Steven J. Metalitz, Chief Nominations Counsel to the Committee, at (202)224-8191.

I also enclose a copy of the unedited transcript of the June 29 hearing. Please feel free to supplement your responses to questions from Committee members with any additional material you consider appropriate. You may forward this additional material with your responses to the enclosed written questions if you wish.

Thank you for your continued cooperation with the Committee in its consideration of your nomination.

Sincerely,

Patrick Leahy
PATRICK LEAHY
United States Senator

encl

WRITTEN QUESTIONS FOR DONALD ABRAM

1. DENTON V. RICKETTS

During the hearing on June 29, you were questioned concerning the decision of the Tenth Circuit in Denton v. Ricketts, reported at 728 F.2d 489 (1984). There are some discrepancies between your testimony about this case, and the opinion of the Tenth Circuit. For example, the Tenth Circuit opinion states that:

> Denton's petition was referred to a United States Magistrate, who conducted an "investigative hearing." More specifically, the magistrate interviewed Denton at the state penitentiary, Denton's mother, and the appointed counsel who represented Denton in the state trial. These interviews were tape recorded.
>
> Based on this investigative hearing, and a review of the state records, the magistrate filed recommended findings and order....The State of Colorado filed objections top the magistrate's recommended findings and order, and specifically objected to the informal nature of the investigative hearings conducted by the magistrate.

728 F.2d at 490. The Tenth Circuit also noted that your recommendation was "based in the main upon these three interviews," and that "the basis for [your] recommendation was a belief by the magistrate that these three interviews were sufficient to show that the state court's determination of factual matters was erroneous." Id., at 491. The Court of Appeals concluded that the "evidentiary hearing" referred to by the statute "should be a hearing which is conducted in an adversarial manner," and that any finding that a state court's factual determination is erroneous must be made "after an adversarial proceeding," and not "on the basis of taped interviews with a defendant, his mother, and trial counsel." Id., at 492.

You testified on June 29 that you "never do informal interviews" in habeas corpus matters, that you took "formal testimony under oath" on Denton's petition, and that "counsel was involved" and "there was cross-examination" at the time you took the statements of Denton and the other individuals. 6/29 transcript at 38-40. You also characterized the decision of the Tenth Circuit in Denton as follows:

> The procedure that was complained of I think by the Circuit was that there was no authority by statute for a full trial of the procedure under our local rules, without the permission of counsel. And since our District does

> not allow the magistrates to try the cases, it should have been tried by Judge Carrigan, rather than by the magistrate.

Id., at 38.

In order to clarify your testimony on Denton v. Ricketts, please respond to the following questions:

(a) Please describe the method by which you took the testimony of Denton, his mother, and his state court trial counsel. Where was the testimony taken? Was it recorded? Was it taken under oath? Was the State notified in advance of the taking of this testimony? Was the State invited to appear by counsel, and to cross-examine the witnesses? Did counsel for, or some other representative of, the State, appear and cross-examine the persons giving testimony? If not, was there any other opportunity for the state to cross-examine these witnesses, or to present testimony or other evidence in opposition to the petition, prior to the time you made your recommendation for action on the petition?

(b) Was the procedure you used to take the testimony of Denton and the other witnesses authorized by local rule, or directive from the judge who referred the petition to you? Have you employed this procedure in other cases? If so, is this the procedure you typically employed in habeas cases involving disputed questions of fact?

(c) Please provide a copy of your recommended findings and order on Denton's petition. Please comment on the Tenth Circuit's statement that your recommendations were "based in the main" upon the testimony you took from Denton and the other witnesses.

(d) The second opinion of the Tenth Circuit in Denton v. Ricketts states that "on remand [following the 1984 decision by the Tenth Circuit], the magistrate conducted an adversarial evidentiary hearing on July 3, 1984." 791 F.2d 824, 826 (10th Cir. 1986). How did the procedures employed in this 1984 hearing differ from those employed in the earlier proceedings you conducted on Denton's petition? Would any local rule or practice of the District Court have prevented you from employing these procedures in the earlier proceeding? If not, why was an "adversarial evidentiary hearing" not held when Denton's petition was first referred to you for recommendation?

(e) How have the procedures you normally employ for resolving disputed factual issues in habeas corpus proceedings changed since the issuance of the first opinion of the Tenth Circuit in Denton v. Ricketts in 1984? What procedures do you normally employ in such cases today?

(f) Please provide any further information concerning the Denton case that you consider relevant to the Committee's consideration of your nomination.

2. One of your important responsibilities as a federal magistrate is to rule on applications for search warrants. As these proceedings are conducted ex parte, what is the responsibility of a magistrate to inquire into the veracity and credibility of assertions made by law enforcement officials in support of such applications? Have you employed any particular procedures in order to satisfy yourself that no search warrant is issued except upon probable cause? Do you have any information about the frequency with which defendants have later sought to suppress evidence seized pursuant to a warrant you have issued, and about the proportion of such motions which are granted in whole or in part?

3. You point out in your questionnaire responses that you "have successfully facilitated settlement in the majority of cases assigned to me" as a U.S. magistrate. To what do you attribute your success in this field? How do you think this experience in facilitating settlements will be useful to you as a federal judge, particularly in light of the crushing case backlog now plaguing the Colorado federal courts?

4. You were involved, as a state court judge, in drafting the Colorado Supreme court's rules on mandatory continuing legal education. How do you think mandatory continuing legal education requirements have worked in Colorado? Do you think these requirements have noticeably improved the quality of practice in the courts with which you are familiar? What will you do, if confirmed, to ensure that the lawyers who appear before you meet the highest standards of professional competence and ethics?

UNITED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
UNITED STATES COURTHOUSE
DENVER, COLORADO 80294

DONALD E. ABRAM

July 25, 1988

Honorable Patrick Leahy
United States Senator
United States Senate Committee on the Judiciary
Dirksen Senate Office Building
Room SD-224
Washington, D.C. 20510-6275

RE: Supplemental Answers

Dear Senator Leahy:

The following are the responses to your questions submitted by the letter of July 12, 1988:

1. DENTON V. RICKETTS

a. The hearings held in 1982 were with notice to the Assistant Attorney General and Vincent Denton, pro se. All testimony was taken under oath and recorded. The records reflect that the Assistant Attorney General attended the first hearing, and was given an opportunity to cross-examine. The Assistant Attorney General failed to appear at the hearing where Vincent Denton testified, which was held at the Colorado State Penitentiary in Canon City, Colorado.

The following documents from the Court file are attached:

1. Order for transcript and state court record dated November 12 1981.
2. Order for hearing dated January 14, 1982.
3. Answer and Return to Show Cause by Assistant Attorney General dated January 18, 1988.
4. Minute Order resetting hearing at the request of Robert Page, dated January 20, 1982.
5. Minute sheet of hearing, January 26, 1982.
6. Minute sheet of hearing, February 2, 1982.

b. I was appointed August 24, 1981 and assigned all pro se prisoner cases shortly thereafter. The procedure used for the prisoner pro se hearings was established by Rule 17(f) of the Local Rules of Practice of the United States District Court and the senior magistrate, Royce Sickler. The

Denton case was conducted pursuant to Rule 17(f)(4)A, B and C. I believe that the Denton hearing was the first habeas corpus hearing held by me as a United States Magistrate. A copy of Rule 17(f) is attached.

7. Local Rule 17(f).

c. The recommendation was based upon the testimony of Robert Page, Mr. Denton, Mrs. Denton, his mother, and the record of the state trial court. The Recommendation, the Amended Recommendation and the Orders of the Honorable Jim R. Carrigan are attached.

8. Recommendation, April 28, 1982.
9. Amended Recommendation, May 12, 1982.
10. Orders of the Honorable Jim R. Carrigan, United States District Judge.

d. The Federal Public Defender was appointed to represent Vincent Denton for the July 3, 1984 hearing. The Assistant Attorney General appeared for the state. Rather than a bifurcated hearing, one hearing was held with the petitioner, Denton being transported from the Colorado State Penitentiary to the United States Courthouse in Denver, Colorado. The hearing was conducted pursuant to Local Rule 605 and Rule 8 of the rules for §2254 cases. Rule 605 is identical to Rule 17(f) of the previous rules of the United States District Court for the District of Colorado. Vincent Denton, Bertha Denton and Robert Page testified at both the 1982 and the 1984 hearings. The Public Defender called two additional witnesses at the 1984 hearing and the Assistant Attorney General, one additional witness. The 1984 hearing was more formal with the Public Defender handling the case in chief for Mr. Denton. In the 1982 hearing, since the petitioner was not represented questions were asked by the United States Magistrate.

The documents reflecting the procedure used in the 1984 hearing are attached:

11. Appointment of Public Defender, May 30, 1984.
12. Order for hearing dated May 30, 1984.
13. Minute sheet of July 3, 1984 hearing.
14. Recommendation dated September 21, 1984.
15. Order of the Honorable Jim R. Carrigan, United States District Judge dated June 4, 1985.

e. I was appointed August 24, 1981. The January, 1982 Denton hearing, I believe was my first §2254 habeas corpus hearing as a United States Magistrate. I changed the procedure after the Denton hearing in 1982 to a procedure where all hearings were held at the state penitentiary with the pro se petitioner and the Attorney General being present at any hearing.

Since the Denton decision, I review the record and if the record reflects that no fact or legal issue exists, a recommendation to dismiss is entered without a hearing pursuant to 28 U.S.C. §1915. Where a fact or legal issue is raised by the petition and record, a Federal Public Defender is appointed at the time and the order to show cause is issued to the Attorney General. This avoids any appearance of an informal hearing. A hearing is held if requested by the Public Defender or the Attorney General.

f. Transcripts of the 1982 and 1984 hearings are available as well as the tape recordings of the actual proceedings.

2. ISSUING OF WARRANTS

I have taught criminal procedure at The University of Denver Law School for four years. Currently, I review each search warrant or arrest warrant with utmost care. I require both the Assistant United States Attorney and the officer seeking the search warrant to be present. In complicated and lengthy drug search warrants, I have requested the Assistant United States Attorney to submit the proposed affidavits several hours before the appearance of the officer so that a detailed review of the affidavit can be accomplished before the officer appears. I am unaware of any search warrants that have been suppressed by the district judges.

3. SETTLEMENT OF CASES

In my seven years as a Magistrate I have handled every type of civil case tried in the United States District Court. Settlements are facilitated by prompt rulings of the United States District Judges on dispositive motions. As a District Judge, I will continue to stress the importance of reducing the costs of discovery, evaluating cases in the early stages and encouraging out of court settlements. This will lead to reducing the number of cases settled at the time of trial and therefore permit valuable trial time to be devoted to those cases that need to be tried.

I have in-depth experience in settling cases as a trial attorney. At the initial Rule 16 scheduling conference, settlement is always explored with the parties. The discovery plan is directed to keeping discovery costs at a minimum but at the same time to allow the parties discovery in order to analyze the case for purposes of settlement. A settlement conference is held with the parties present to evaluate the discovery, to determine the costs of additional discovery, to evaluate the risk of going to trial for each party and outline possible methods of settling the case to avoid the costs. Personal participation of the clients is important since the client is paying the attorney and the costs.

I personally review the file and any motions pending before each settlement conference in order to be familiar with the factual and legal arguments of the parties. The attorneys are required to submit confidential letters prior to the settlement conference stating the parameters of their settlement authority.

4. COLORADO COMMISSION ON CONTINUING LEGAL AND JUDICIAL EDUCATION

The requirements that lawyers and judges continue their legal education is essential to maintaining an efficient court system. New laws and regulations are created yearly. Judicial decisions continue to multiply with the increased number of trial and appellate judges. Continuing education forces an attorney or judge to schedule a period in the year to update his legal knowledge. Additionaly, the continuing legal education requirements have improved the preparation of attorneys who appear in court. Now that CLE has been established and accepted by the Colorado bar, the number of hours of legal education required should be increased and the standards of approving legal education programs tightened.

Both as a state judge and as a United States Magistrate, potential professional conflicts arise during the pretrial and trial of a case. During Rule 16 scheduling conferences, ethical conflicts often appear early on in the case. For instance, where an attorney has prepared a contract and is the attorney attempting to enforce the contract, a possible conflict arises because the attorney becomes a potential witness under DR 5-102. I bring to the attorney's attention the possible conflict during a Rule 16 hearing and encourage counsel to withdraw early in the discovery process. I presently lecture on professional responsibility to bar associations and legal groups with an emphasis on the attorney's responsiblity pursuant to Rule 11, Rule 16 and 28 U.S.C. §1927. Lectures are presently scheduled before the Defense Lawyers' Association on August 27, 1988 and the Aurora Bar Association January 19, 1989.

SENATOR THURMOND'S QUESTIONS

1. MR. ABRAM, WOULD YOU TELL THE COMMITTEE WHAT EXPERIENCE YOU HAVE THAT WOULD BE OF VALUE TO YOU AS A FEDERAL DISTRICT COURT JUDGE?

Commencing in 1963 I was a civil trial lawyer specializing in automobile, products liability and medical malpractice cases until my appointment to the state district court. In August of 1975 I was appointed as a district judge for the Tenth Judicial District of the state of Colorado. As a state district judge I tried civil, criminal, juvenile and mental health trials. Because of the heavy case load, court management of the docket was essential to providing prompt trials and rulings. The statistics provided to the Judiciary Committee at my hearing establish my ability to manage a heavy case load. Since August 24, 1981, I have as a United States Magistrate been involved in the pretrial scheduling, discovery and motions and every type of case tried in the United States District Court for the District of Colorado. Case management of the civil cases has been very important in Colorado because of the two unfilled district judge vacancies since May of 1985. Judges during that period of time have increased the percentage of cases assigned to me. As a result, I presently handle over 50% of the new civil cases assigned to magistrates as well as hearing criminal matters every thrid month. Through case management I have been able to dispose of by settlement or pretrial 360 cases in 1985, 415 cases in 1986, and 472 cases is 1987.

To improve my case management and judicial skills, I have attended two courses at the National College for State Trial Judges in Reno, Nevada and one course at the Institute for Court Management. I have taught federal jurisdiction and for the last four years criminal procedure as a Lecturer in Law at the University of Denver Law School. I further lecture to bar associations and legal groups on legal and judicial ethics.

Based upon my experience and present duties as a United States Magistrate, I could commence trying cases immediately upon being sworn in as a United States District Judge. In light of the three vacancies in the United States District Court for the District of Colorado, I believe that this is an important consideration to be given by the Senate Judiciary Committee.

2. MR. ABRAM, THERE IS FREQUENTLY A CONFLICT BETWEEN THE DEEPLY-FELT CONSTITUTIONAL VIEWS OF A FEDERAL JUDGE AND THE CONSTRAINT OF JUDICIAL PRECEDENT. HOW WOULD YOU RESOLVE THE TENSION BETWEEN PERSONAL JURISPRUDENCE AND PRECEDENT?

The common law system of jurisprudence is based upon precedent. A person who acts under the belief that he is following existing legal precedent should have the assurance that the court will uphold his actions based upon existing law. Chaos and uncertainty would be created in the daily lives of citizens and businesspersons if the theory of common law precedent were not followed by the judges. A Judge's personal deeply-felt constitutional view should not be substituted for upholding his oath of office to carry out the laws of the United States.

3. MR. ABRAM, THE PHRASE "JUDICIAL ACTIVISM" IS OFTEN USED TO DESCRIBE THE TENDENCY OF JUDGES TO MAKE DECISIONS ON ISSUES THAT ARE NOT PROPERLY WITHIN THE SCOPE OF THEIR AUTHORITY. WHAT DOES THAT PHRASE "JUDICIAL ACTIVISM" MEAN TO YOU?

As I previously stated in my answer to the Senate Judiciary questionnaire, I have deep respect for the constitutional doctrine of separation of powers. Political and social issues are best resolved in the legislative branch of government. It is through the legislative branch that the citizen has a voice both by his right to vote and his ability to talk directly with the legislator. The management of the policies established by the legislative branch should be exercised by the executive branch. When the court is required to interpret the laws or regulations, utmost deference should be given by the court in carrying out the intent of Congress. When cases are brought before the court, a judge should rule on the specific question before him and fashion a specific remedy for that case.

CERTIFICAION

I CERTIFY that all of the foregoing statements are true, complete, and correct to the best of my knowledge and belife and are made in good faith.

DATED: July 25, 1988

Donald E. Abram

cc: Honorable Joseph R. Biden
    Chairman, Committee of the Judiciary
    Honorable Strom Thurmond
    United States Senator
    Steven J. Metalitz
    Chief Nominations Counsel to the Committee
    Caroline W. Weil
    Special Assistant, Dept. of Justice

Senator LEAHY. I want you and Mrs. Abram to certainly feel free to leave. You do not have to stay for the rest of this hearing. We actually have half-way decent weather out here for Washington this time of year and you may want to enjoy it.

Mr. ABRAM. Thank you.

Senator LEAHY. I am going to call Mr. Butler next, because we will hold that hearing and then Senator Heflin will come in to hold the Forester hearing.

Mr. Butler, if you will step forward please and raise your right hand: Do you solemnly swear that the testimony you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BUTLER. I do.

TESTIMONY OF CHARLES R. BUTLER, JR., OF ALABAMA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

Senator LEAHY. Mr. Butler, did you have any statement that you wish to make for the record?

Mr. BUTLER. Other than to thank the committee for considering my nomination to this point, Mr. Chairman, and I look forward to further cooperation this morning.

Senator LEAHY. Thank you.

In response to a question on the committee's questionnaire, you said that you were first approached to apply for a seat on the district court by Brevard Hand, the chief judge of the southern district of Alabama. That kind of jumped out at me, because I do not recall another nominee, where the first contact was made from a sitting Federal judge. Just out of curiosity, do you want to tell me the circumstances of that call, what Judge Hand said?

Mr. BUTLER. Mr. Chairman, I have indicated to Judge Hand a number of years ago, in conversation with him, that I would one day be interested in serving on the Federal bench. When the last vacancy on the Federal bench in the southern district came open, I understood that there was another lawyer who was going to proceed with his efforts to seek the nomination. I was then later told by Judge Hand that he had decided not to, and it was at that point that the conversation I made reference to took place.

Senator LEAHY. And I understand that our staff has reviewed with you a number of questions that have been raised concerning your work as the district attorney for Mobile County.

Mr. BUTLER. Yes, sir.

Senator LEAHY. So these questions will certainly come as no surprise to you, but let me inquire first with the case of Barbara Ann Wright. Now, as I understand it, she is a woman who was suspected of involvement with substantial drug dealing activities in the early seventies. She was arrested for robbery in the fall of 1971, and upon her arrest she offered to provide information that would implicate some high-level drug traffickers as well as a number of public officials who were supposed to be cooperating with them.

As I understand it, she offered to wear a wire and go through the normal undercover procedure. Now, the committee was told that you were approached with that, approached with her offer to do this, wear a wire and so on, and you refused to do anything with the information. Is that correct?

Mr. **Butler**. Senator, the statement is in substance correct, but the reasons for my decision at the time were that the major drug dealer that she was supposedly willing to go gather evidence from was already under investigation by the Internal Revenue Service, the Justice Department, the FBI, and other law enforcement agencies. I was aware of that. As Mobile District Attorney, I was in constant contact and communication with the U.S. attorney and the Internal Revenue Service special agent in charge of this investigation. It was my decision that it was not necessary to use this additional offer of testimony from Barbara Wright to attempt to develop evidence that was already being developed from other sources. I discussed that at the time with the U.S. attorney for the southern district, Charles Whitespunner, and also with the agent involved in that investigation, Mr. Coats, and for that reason we decided not to proceed.

Senator **Leahy**. You told them then of Ms. Wright's offer to wear a wire and so forth?

Mr. **Butler**. Yes, sir, and that investigation, Senator, of the individual—his name was Noble Beasley—resulted a year and a half later in his conviction in Federal court of drug possession, sale, and income tax evasion charges and he was sentenced to 23 years in the Federal penitentiary.

Senator **Leahy**. So they were not interested in it. Having been made aware of the offer, it is your testimony that the Federal authorities were made aware of the offer that had been made to you and declined that offer?

Mr. **Butler**. I can remember, Senator, I made the decision to decline the offer, and 17 years ago that dim light of hindsight does not tell me all I need to know to answer that question fully, but I was in complete and full contact and had full knowledge of the ongoing investigation against Mr. Beasley and made the conscious decision not to use Barbara Wright, because of the concern that it might in some way expose Mr. Beasley to the fact that he was being investigated. We had the FBI, the Justice Department, the Internal Revenue Service already investigating him, and the offer in my judgment would have jeopardized that investigation.

Senator **Leahy**. I understand also that she said that two police officers were involved in illegal activity.

Mr. **Butler**. Yes, sir.

Senator **Leahy**. What did you do about that?

Mr. **Butler**. I reported that information to the police lieutenant who was involved in the undercover drug investigation of Noble Beasley. His name was Kater Williams. He is now the Chief of Police of Dothan, Alabama. Chief Williams recalls—and I have a letter to that effect from him—that when I made him aware of that information that possibly these two officers were somehow involved in illegal drug activity with Mr. Beasley, that he began to immediately monitor the situation. Shortly thereafter, he transferred them out of the detective division of the Mobile Police Department and put them in the patrol division so that they would not be in as close a position as they were to have perhaps, if the allegations were true that Barbara Wright made, to have tipped off Mr. Beasley or somehow jeopardize that ongoing investigation.

Senator Leahy. Did you feel any need to use her offer of undercover activity against these two officers?

Mr. Butler. No, sir, not at that time.

Senator Leahy. Let me make sure I fully understand why you did not. Did you feel that it was enough by just notifying the lieutenant, or did you feel this might——

Mr. Butler. I felt it would jeopardize the Federal investigation that was going on on Noble Beasley, because the allegation, as I recall it, was that the two officers and Beasley were somehow connected——

Senator Leahy. I see.

Mr. Butler [continuing]. So that using Barbara Wright in an effort to get any of them would in my judgment have jeopardized the major investigation that was going on.

Senator Leahy. Did she also make an allegation that a public official was involved?

Mr. Butler. Senator, I do not recall that allegation, but let me say this: Had that allegation been made, I would have followed up on it. That allegation to my knowledge, without the committee having yet specified to me who that public official was, it is difficult to answer specifically, but I would have to say today that that allegation was not made to me back in 1971.

Senator Leahy. In October of 1971, you initiated a murder prosecution against a woman named Evelyn Jordan. About a month later, information was presented to you that implicated two other women in the murder and exonerated Jordan, but you did not dismiss the case against her for 4 months, and only after her attorney pressed for habeas corpus. Do you recall why you did not dismiss the——

Mr. Butler. Yes, I recall that case specifically, because I handled it personally, Mr. Chairman. Evelyn Jordan was not prosecuted by me. She was indicted by the Mobile County Grand Jury who had heard the complaining witness, whoever it was, and they found probable cause that she committed the murder.

At some point after that, and I could not tell you the date or time if I had to, I was approached by Deputy Travis and/or others—and I do not remember who all the "and/or others" could have been at this time—that other people had perhaps committed this crime. I weighed that evidence at the time, Senator, and it was tested before a circuit judge, the weight and credibility of that new evidence on Ms. Jordan's petition for a writ of habeas corpus. Judge Hubert Robertson did not think the new evidence was credible enough to conclude that she Evelyn Jordan was not in fact guilty, so he denied the petition for habeas corpus.

Several months later, on my own initiative, I moved to dismiss the indictment. So faced with the grand jury indictment originally against her and denial of the habeas corpus, I was convinced later that that woman was innocent and I moved to dismiss her indictment.

Senator Leahy. So you nol prossed it?

Mr. Butler. Nol prossed, yes, sir.

Senator **Leahy**. But was there something new in there? Why did you nol pros it several months later and not with the information——

Mr. **Butler**. Mr. Chairman, I have tried to analogize the burden and task that has been put on me to look at 17 years ago, after handling 8,000 cases, and I would like to just share with the chairman what it must feel like to be given a very expensive telescope and told to look on an island 17 miles away but to turn the telescope around backwards, and that is what I have been called on to do and it is extremely difficult.

Senator **Leahy**. Mr. Butler, we fully understand that. I know that cases I prosecuted 17 years ago I would have to really scrounge in my memory to recall. I fully understand, but I am just asking if you recall.

Mr. **Butler**. No, sir, and in the best——

Senator **Leahy**. If you do not, I understand that also.

Mr. **Butler**. Yes, sir. Let me tell you, the best effort I made to find that information to satisfy this committee was I contacted the present Mobile County District Attorney's office Monday of this week and asked them if they could go into storage and get both the Barbara Wright and the Evelyn Jordan file, and those files were destroyed in 1975—well, not in 1975, but from 1975 back, the district attorney's office files have been destroyed, simply for space reasons, all the files. So I am operating from the docket sheet that has been furnished to your staff and my memory.

Senator **Leahy**. In your memory, as well as you can, there were 5 months between her arrest and the time the charges were dropped. What concern did you have that there may be an innocent person sitting there?

Mr. **Butler**. Senator, let me explain it this way: As you know from my background, I served as the public defender of Mobile for a year and a half, defending nothing but indigent accused criminals. It was during that experience that I learned that the district attorney's office indicted or had grand juries meet twice a year. As a result of that, a criminal defendant arrested the month that a grand jury met might not get indicted for 6 months or maybe a year.

When I took over in the district attorney's office, I changed that so that a grand jury met every month, in order to insure indigent accused like Evelyn Jordan of a speedy trial, and in her case the decision that I ultimately made to get her out of jail on my own volition took place within that period of time, and I cannot recall what events or other factors entered into my decision.

Senator **Leahy**. Do you recall the Mod Squad——

Mr. **Butler**. Yes, sir.

Senator **Leahy** [continuing]. The Mobile Deputy Sheriffs responsible for investigating drug crimes?

Mr. **Butler**. Yes, sir.

Senator **Leahy**. Do you recall in 1973 that questions were raised about whether some members of the Mod Squad were themselves involved in illegal activity or misconduct?

Mr. **Butler**. Yes, sir.

Senator **Leahy**. You do recall that?

Mr. **Butler**. Yes, sir.

Senator **Leahy**. And you would have been responsible for prosecuting illegal activity by them, would you not?

Mr. **Butler**. Yes, sir.

Senator **Leahy**. We were told that in early 1973 you were apprised of evidence suggesting that members of the Mod Squad were taking amounts of marijuana that had been seized from drug dealers and diverting it for their own purposes, and that you did nothing about that. What is your recollection?

Mr. **Butler**. My recollection was refreshed when I spoke with an assistant district attorney of mine, who is now in Montgomery, Alabama, Charles Graddick, to whom I had turned over the matter of that inquiry. Mr. Graddick has presented a letter directed to this committee, and I would like to ask that this letter be made a matter—I now offer it for the committee's consideration.

Senator **Leahy**. It will be made part of the record.

[Letter follows:]

THORNTON, FARISH & GAUNTT
515 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36104
205/265-0221

June 27, 1988

United States Senate
Committee on the Judiciary
Washington, D.C. 20510-3201

Dear Gentlemen:

This letter is in reference to your consideration of Charles R. Butler for confirmation as a United States District Judge for the Southern District of Alabama. By way of background, I served as one of Mr. Butler's Assistant District Attorneys from 1971-1975, after which time I was elected District Attorney for Mobile County upon Mr. Butler's decision not to seek re-election. I held that office from 1975-1979. Subsequently, I was elected to serve as Alabama's Attorney General for two consecutive four-year terms.

During the time when I served as an Assistant District Attorney in the Mobile County District Attorneys Office, I became aware of an allegation regarding the "Mod Squad", which was a special narcotics unit in the Mobile County Sheriffs Department. Mr. Butler requested that I assist in looking into the allegation. After a full analysis and investigation, I determined that there was no evidence to warrant any further action and recommended same to Mr. Butler.

At no time during my terms of office as District Attorney for Mobile County or Attorney General for the State of Alabama was this matter brought back for further examination.

Should you desire to discuss this matter with me personally, I will be glad to do so.

Sincerely yours,

THORNTON, FARISH & GAUNTT

Charles A. Graddick

Charles A. Graddick

CAG:jhp

Mr. **Butler**. And basically what Mr. Graddick says in his concluding sentence is, "Mr. Butler requested that I assist in looking into the allegation. After a full analysis and investigation, I determined that there was no evidence to warrant any further action and recommended same to Mr. Butler."

Senator **Leahy**. Did you ask—did he say whether you asked for that inquiry before or after the county commission began looking into their activities?

Mr. **Butler**. I do not know that, Mr. Chairman. I do not recall that.

Senator **Leahy**. Now, was Graddick's investigation into the drug theft charges or something else? Do you know?

Mr. **Butler**. When I discussed this allegation that had been conveyed by your committee staff, Mr. Chairman, I conveyed it to Mr. Graddick as it had been conveyed to me by Andy Rainer, and it involved the discrepancies and the amount of drugs seized and then turned over to the State Department of Toxicology. That is what I understood the allegation was and that is the allegation to which Mr. Graddick has responded.

Now, I might add, Mr. Chairman, that the Mod Squad came about at the time when there was a great deal of drug activity in Mobile, it was sort of the new crime of the early seventies. There were mistakes made by members of the Mod Squad. Sometimes their search warrants were questioned by lawyers, sometimes they may have done some other error. There were other complaints made because at times they tended to react to situations that might not have been appropriate, so from time to time you heard controversial matters about the Mod Squad, no question about that.

Senator **Leahy**. When you first made your response to the committee's questionnaire, in May, you indicated that you were a member of a number of private clubs and organizations which have no black members. On June 13, you wrote a letter to Senator Biden, enclosing letters of resignation from two of those clubs. Why did you decide to resign this month, when you had been a member for several years?

Mr. **Butler**. Mr. Chairman, the focus of my life in the past 3 to 4 months has been on matters that, of course, we are here today to consider, and it has caused me to refocus on the practices that appear from the fact that there are no blacks in some of these clubs, that a citizen of the first district would suggest that I am a member of a club that excludes blacks.

I felt it appropriate to resign so as not to even give the appearance of that, even though it is my understanding that none of those clubs have by-laws, charters or other racially exclusive rules or regulations.

Senator **Leahy**. Thank you, Mr. Butler. I have a number of other questions, but I will submit them for the record to you.

Thank you very much, sir.

Senator Heflin?

Senator **Heflin**. On the Barbara Ann Wright matter which, according to the information from the former deputy sheriff in Mobile County, Bill Travis, she was willing to act as an informer and help convict a large drug dealer in Mobile, and you in effect have testified that that was true. She was willing to be bugged and go and have any conversation recorded with various people, and you state that the reason that you turned down the request to use Barbara Ann Wright as an informer and bugger was because there was an ongoing investigation by the FBI, the Department of Justice, and the Internal Revenue Service on this person by the name of Beasley. What was his name?

Mr. **Butler**. Noble Beasley.

Senator **Heflin**. Noble Beasley. Relative to that, there has been some allegation that she offered to do something about a city official or a county official. Do you recall that? I realize that was 17 years ago, but do you recall anything of what was said about whether there was an official or a county official or someone——

Mr. **Butler**. Senator, I do not, but let me say this: I was called on to investigate other public officials in my tenure as district attorney and I did. I called grand juries into session for the specific purpose of investigating Mobile County Commissioners, we indicted the manager of the Mobile Municipal Auditorium Board, we prosecuted a contractor who had skimmed money from a school, a Mobile public school renovation contract, I called a grand jury into session to prosecute a Mobile policeman on another matter, so I would have responded back in 1971 to such an allegation by satisfying myself then that, yes, there was enough evidence, or no, there was not, to call a grand jury, and I must have satisfied myself, although today I cannot tell you that I recall the exact incident.

Senator **Heflin**. Do you know whether or not the FBI or the Department of Justice or the Internal Revenue Service considered using Barbara Ann Wright?

Mr. **Butler**. Yes, sir. A former special agent for the Intelligence Division of the Internal Revenue Service, Mr. Doyle Coats, who is now a resident of Gulfport, Mississippi, has submitted a letter to me, and I would like to ask that this be considered by this committee as a matter of this record, where he relates in his two-page report or two-page letter of the involvement or the potential involvement of Barbara Wright.

Senator **Heflin**. Do you have any other statements or letters or documents from other people that you would like to have introduced into the record as evidence?

Mr. **Butler**. Yes, sir. The former chief assistant district attorney of Mobile County, Mr. Robert Campbell, has given a statement reflecting on this matter, and the chief of police of the city of Dothan, Kater Williams, has also written a letter and statement explaining what I had earlier told the chairman about the fact that I made him aware of the allegations into these officers and he took administrative action at the very least to see that that action be curtailed, if not corrected.

Senator **Heflin**. Do you wish those to be entered in the record?

Mr. **Butler**. Yes, sir, I do.

Senator **Leahy**. Without objection, it is so ordered.

[The material referred to follows:]

HESTER & COATS
ATTORNEYS AND COUNSELORS AT LAW
[illegible] TWENTY-FIRST AVENUE
GULFPORT, MISSISSIPPI [illegible]

JOHN F. HESTER
DOYLE L. COATS

(601) [illegible]
(601) [illegible]

June 24, 1988

RE: Charles R. Butler, Jr., Esquire
Proposed Judicial Appointment

To Whom It May Concern:

My name is Doyle L. Coats. During the period 1971 thru 1974 I was assigned to Mobile, Alabama, as a Special Agent, Intelligence Division, Internal Revenue Service, U. S. Treasury Department. I was transferred there to work primarily on the Narcotics Trafficking Project (NTP) which was in effect at that time, and Organized Crime in the Mobile area. As a result of this assignment I had occasion to meet Charles R. Butler, who was then the Mobile County District Attorney.

At my initial meeting with Mr. Butler I explained to him that I wanted to identify and investigate cases on those individuals who were identified as being the major organized crime figures or drug traffickers in the area. With Mr. Butler's full cooperation and help, we successfully identified and prosecuted in Federal Court such individuals as Noble Beasly and others in drug conspiracy cases with substantive tax cases which resulted in very severe sentences. In addition, Mr. Butler was extremely helpful in our investigation of matters relating to the Mobile Municipal Auditorium which resulted in a number of Hobbs Act conspiracies and extortion cases with substantive tax counts. Also, to my knowledge, Mr. Butler cooperated fully with the U. S. Attorney, Charles Whitespunner, and his Chief Assistant at the time, Rudy Favre.

During the course of my investigations I came to know and respect Mr. Butler as being a man of the highest integrity who always dealt with me in a very open and honest manner in an effort to do the best he could to make the Mobile area a better and safer area in which to live. I believe that he was a very industrious and very fine District Attorney who cooperated fully with all the Federal Agencies without regard for who was going to get the credit.

To Whom It May Concern
June 24, 1988
Page Two

In the last few months I have been contacted by the FBI, other former state and local law enforcement personnel and Mr. Andy Rainer, Senate Judiciary Committee regarding Mr. Butler's possible appointment as a United States District Court Judge. Mr. Rainer evidently had some question relative to Mr. Butler's prosecution of a Barbara Wright aka Big Barbara. Evidently a former deputy sheriff and a former state investigator felt that they could have used "Big Barbara" in some undercover capacity to attempt to make a case on Noble Beasly had Mr. Butler been willing to plea bargain with her. I have no knowledge of whether any plea negotiations did occur. I do know that "Big Barbara" had a notorious reputation in the community as a criminal who was extremely dangerous. She was a self-professed Black Panther and had been involved in firebombings and killings. In addition, "Big Barbara" had personally robbed at gunpoint a State Investigator of his money, clothes and pistol. After her incarceration at the Women's State Prison in Wetumpka, Alabama, I went to see her in the prison to see what, if any, cooperation I might get from her. At that time she had been in prison for about a year. The Warden informed me that "Big Barbara" was very dangerous and mean and they had to keep her in solitary confinement to keep her from injuring the other inmates. "Big Barbara" was very militant and totally uncooperative during my interview with her.

I know of no reason to second guess Mr. Butler's decision to prosecute "Big Barbara" to the fullest extent of the law without allowing her to return to the streets where she was a serious menace to the public. In addition, because of his cooperation Mr. Butler was privy to a number of facts that state and local investigators were not and he was in a much better position to make decisions relative to plea bargaining and prosecutions than were the county investigators.

Should there be any further questions, please feel free to contact me at your convenience.

Sincerely,

Doyle L. Coat

Doyle L. Coats

DLC/do

STATE OF ALABAMA)
COUNTY OF MOBILE)

AFFIDAVIT

Personally appeared before me, the undersigned authority, ROBERT C. CAMPBELL, III, who by me having been first duly sworn on oath deposes and says as follows:

I, Robert C. Campbell, III, am a practicing attorney in Mobile, Alabama and a former Chief Assistant District Attorney serving under former District Attorney of Mobile, Charles R. Butler, Jr.

The purpose of providing this affidavit is to respond more fully to what I understand to be allegations brought against Mr. Butler regarding his nomination for the position of District Judge for the Southern District of Alabama.

More specifically, I have been contacted by a member of the staff of the Senate Judiciary Committee. During my conversation it was implied that Mr. Butler, while District Attorney of Mobile from January 1971 through January 1975, refused to cooperate with a known criminal by the name of "Big Barbara" in order to allegedly pursue the prosecution of others who were not specifically identified to me. Although the staff member mentioned the name of Noble Beasley and discussed certain activities of said individual, I am not sure as to whom "Big Barbara" allegedly had in mind regarding potential criminal suspects.

I am sure, however, that Mr. Butler never refused to prosecute to the fullest extent people suspected of commiting crimes. Mr. Butler's integrity and sense of professionalism was exemplary in every shape, form and fashion.

If "Big Barbara" offered to "make a deal" to accept lesser punishment and no agreement was reached with Mr. Butler, there was more than good reason and sound judgment to reject her offer.

Regarding the activities of Mr. Beasley, I am aware that there was an ongoing investigation of this individual which was extremely sensitive. To consider making agreements with "Big Barbara" which may have adversely affected this investigation would, in my opinion, have been foolish.

During the course of my conversation with the above described staff member, I was asked if I knew of the "Mod Squad". I stated I was aware of three sheriff deputies who participated in undercover investigations. To my knowledge it was not an accepted procedure for any sheriff deputy to use what is commonly known as body microphones during the course of said investigations in the early 1970's. Criminal law was rapidly changing in the areas of search warrants, confessions and wire tapping requirements. Quite frankly, Mr. Butler's desire was to try "clean cases" which would lead to prosecutions that would not be reversed on appeal. In other words the general understanding in the District Attorney's office at that time was to try cases "straight up" which ultimately stood up on appeal.

If there was ever a suggestion by any sheriff's deputy that a body mike be used in connection with the Beasley investigation, especially in conjunction with the prosecution of "Big Barbara", I am sure that Mr. Butler would have refused such advice. To have experimented with "body mikes" used by either sheriff deputies or "Big Barbara" during the course of this investigation would have seriously jeopardized the investigation. In fact, in my opinion, it would have been a recipe for failure. To second guess this decision is one thing, but to imply that Mr. Butler based his decision on less than honest motives is preposterous.

Again, Mr. Butler was a tough prosecutor who did not cut corners. His record more than reflects his high level of proficiency and integrity.

Further affiant saith not.

ROBERT C. CAMPBELL, III

Subscribed and sworn to
before me on this the
27th day of June, 1988.

Emily D. Duke
NOTARY PUBLIC, Alabama State at Large
My Commission Expires: 9/8/91
(AFFIX NOTARIAL SEAL)

BOARD OF COMMISSIONERS
LARRY C. REGISTER
PRESIDENT MAYOR
JOHN H. BLANTON, JR.
COMMISSIONER, WARD 1
DON CLEMENTS
COMMISSIONER, WARD 2
MATT BULLARD
COMMISSIONER, WARD 3
S.A. CHERRY, SR.
COMMISSIONER WARD 4

The City Of Dothan
POST OFFICE BOX 2128
DOTHAN, ALABAMA
36302
205/793-0109

Please address reply: Chief of Police

June 27, 1988

TO WHOM IT MAY CONCERN:

My name is Kater Williams. I am Police Chief for the City of Dothan, Alabama. I have served in this capacity since July 1974.

Prior to my present appointment, I was employed by the Mobile Police Department for twenty years. I retired as Chief of Detectives with the rank of Captain of Police.

On several occasions during my tenure with the Mobile Police Department, I was in charge of special details responsible for the investigation of criminal activities including fire bombings, holdups, illegal drugs and public corruption. Those details usually consisted of personnel of local, county, State and Federal agencies. During these assignments I became acutely aware of the criminal and political elements in the Mobile area.

One criminal element which was well ogranized engaged in extortion of businesses and individuals by fire bombing and other forms of intimidation. The organization was also highly involved in illicit drug activity.

Several individuals involved in known and suspected activity were targeted and a joint local and Federal investigation was launched. I participated in the investigation.

An organization led by Noble Beasley was targeted. By utilizing stakeouts teams we were able to apprehend a member of the organization after he had fire bombed a business. Subsequent investigations also led to the discovery of a bomb factory and substantial inroads were made into the organization. As a result of the investigation, Noble Beasley was later convicted in Federal Court. Other members of the organization were convicted on various charges in State courts.

During these investigations, Mr. Charles R. Butler began serving as District Attorney for Mobile County. For the first time during my employment, we began receiving cooperation from that office. The aggresive procecutive posture initiated by Mr. Butler and his staff contributed greatly to the successful resolution of many criminal acts occurring in our jurisdiction. As Chief of Detectives I met often with Mr. Butler and his staff to discuss the various ways we could combat criminal activity.

At some time while the investigation of Noble Beasley was being conducted an individual known to me as "Big Barbara" was arrested, after she participated in the robbery of a State agent whom she had met in a local night club. I was on duty at the time this offense occurred and followed it closely through the court system. "Big Barbara" was also known by me as an unreliable and dangerous individual who could not be trusted and had close ties to the Noble Beasley organization. After her arrest I met with District Attorney Butler and we discussed the possibility of utilizing "Big Barbara" in an attempt to implicate two Mobile Police Investigators in illegal activity.

It was obsious to me that because of the character of "Big Barbara" the ongoing investigation of Noble Beasley would, or could be jeopardized.

As to the investigators, rumors, some of which I personally investigated were continually being heard regarding those officers and other personnel.

After I assumed command of the Criminal Investigation Division, I arranged the two investigators transfer to another division while we continued the investigation into the so called allegations.

I also participated in the investigation conducted by Mr. Butler and his staff regarding "kick backs" associated with the Mobile Municipal Auditorium. This investigation again was brought to a successful conclusion and indictments were returned by a Mobile Grand Jury.

I am aware of the aggresive investigation conducted by Mr. Butler after a Mobile Police Officer used "deadly force" upon a fleeing felon. The incident was thoroughly investigated and presented to a Grand Jury.

Mr. Butler's Office was very instrumental in helping reduce crime in Mobile during his tenure as District Attorney. In 1972 the Mobile Police Department was awarded a certificate signed by the

President of the United States for their efforts in being one of the few cities in the Nation to reduce crime.

The dedicated personnel of the Mobile Police Department, along with the Mobile county District Attorney's Office can be given credit for these efforts.

I have known Charles R. Butler for many years, he is knowledgeable and a man of courage and integrity.

Yours truly,

Kater Williams, Chief

Chief Kater Williams
Dothan Police Department
Dothan, Alabama

KW:lm

THORNTON, FARISH & GAUNTT
515 SOUTH PERRY STREET
MONTGOMERY, ALABAMA 36104
205/262-0221

June 27, 1988

United States Senate
Committee on the Judiciary
Washington, D.C. 20510-3201

Dear Gentlemen:

This letter is in reference to your consideration of Charles R. Butler for confirmation as a United States District Judge for the Southern District of Alabama. By way of background, I served as one of Mr. Butler's Assistant District Attorneys from 1971-1975, after which time I was elected District Attorney for Mobile County upon Mr. Butler's decision not to seek re-election. I held that office from 1975-1979. Subsequently, I was elected to serve as Alabama's Attorney General for two consecutive four-year terms.

During the time when I served as an Assistant District Attorney in the Mobile County District Attorneys Office, I became aware of an allegation regarding the "Mod Squad", which was a special narcotics unit in the Mobile County Sheriffs Department. Mr. Butler requested that I assist in looking into the allegation. After a full analysis and investigation, I determined that there was no evidence to warrant any further action and recommended same to Mr. Butler.

At no time during my terms of office as District Attorney for Mobile County or Attorney General for the State of Alabama was this matter brought back for further examination.

Should you desire to discuss this matter with me personally, I will be glad to do so.

Sincerely yours,

THORNTON, FARISH & GAUNTT

Charles A. Graddick

Charles A. Graddick

CAG:jhp

Senator Heflin. In regards to Evelyn Jordan, as I understand it, Mr. Travis, the former deputy sheriff, has told the committee in effect that he told you he had caught the actual murderers. You had indicted her for murder on October 6, 1971, and Travis says in November of 1971 he told you Evelyn Jordan was not guilty and that he had apprehended the actual murderers.

According to the information, that was not processed until March of 1972. Now, do you have with you a photostatic copy of the records pertaining to the Mobile County Criminal Court dealing with Evelyn Jordan?

Mr. Butler. Yes, sir, I do, and I would like to ask the committee to have that made part of the record.

Senator Heflin. Would you like to have that introduced in the record?

Mr. Butler. Yes, sir.

Senator Leahy. Without objection, it is so ordered.

[The document referred to follows:]

[redacted] 53a

11/10/71 - Bond fixed at $7500. - and case
Re-set Nov. 19th 1971 for hearing on Pleadings at 9 A.M. Witnesses ordered to return to Court at that time on that date.

11-10-71

[illegible] CIRCUIT COURT, MOBILE COUNTY (CRIMINAL) Case No. [illegible]

ATTORNEYS Charles R. Butler, Jr. District Attorney

[redacted]

Trial set for: 3/29/72

Grand Jury No. 164

STATE OF ALABAMA

VS. OFFENSE CHARGED MURDER FIRST DEGREE

EVELYN LOUISE JORDAN

Peter Palughi (apptd)

1901 Merline Lane

(JAIL) (X) Jury ( ) N. J.

Date of Arrest: 8/27/71

Race: C Sex: F Age: 11/6/39

BOUND OVER TO GRAND JURY FROM:

(X) Inferior Court Inf. Ct. No. 9206

( ) Recorder's Court-Gen. Ct. No.

( ) Prichard's Recorder's Ct. No.

( ) J. of P. Ct., Precinct No.

( )

Date of Indictment: OCT 6 1971

Placed on Docket: OCT 6 1971

Arrested by: Ray D. Bridges, Sheriff

Bondsman:

APPEALED FROM:

( ) Inferior Court-Inf. Ct. No.

( ) Recorder's Court-Gen. Ct. No.

( ) Prichard's Recorder's Ct. No.

( ) J. of P. Ct., Precinct No.

( )

ORDERS AND JUDGMENT OF COURT.

October 28th, 1971 -

The Court, before arraignment, having ascertained that the defendant is not represented by Counsel; desires the assistance of Counsel and is not able financially or otherwise to obtain the assistance of Counsel; It is ordered and adjudged that Peter Palughi is [illegible] licensed attorney hereby appointed to represent, assist and defend the Defendant in this case. Defendant waived reading of indictment and plead not guilty. Defendant reserved the right to file special pleas within [illegible] days. Defendant served with copy of indictment - Attorney, Delmo Palughi in court on arraignment.

Judge.

34-254

Motion filed by the defendant November 3rd, 1971, to Quash the Indictment and to Dismiss.

November 5th, 1971 - Motion filed by the defendant November 3rd, 1971, to Quash the Indictment and to Dismiss set for hearing November 10th, 1971, at 9:30 A.M. Clerk ordered to re-summons witnesses.

W.F.M.

Demurrer to Motion to quash filed by the State November 9th, 1971.

November 10th, 1971 - Bond for the defendant fixed by the Court at the sum of $7,500.00

Motion filed by the Defendant, November 10th, 1971 for leave to amend Motion filed Nov 3 1971 to Quash the Indictment and to dismiss.

November 10th, 1971 - Defendant's Motion filed November 10th, 1971 for leave to amend Motion filed November 3, 1971 to quash the indictment and to dismiss, Granted.

W.F.M. 34-[illegible]

Amendment to Defendant's Motion filed November 3, 1971 to quash the indictment and to dismiss. Filed November 10th, 1971.

Demurrer to amended Motion to quash and to dismiss indictment filed by the State November 10th, 1971

[illegible] to Quash the indictment and to dismiss, filed November 3rd, 1971, refiled November 10th, 1971 by the State to the Defendant's Motion to quash the indictment and to dismiss, as amended November 10th, 1971

November 10th, 1971 - Case reset for 9 AM on Friday November 19th, 1971 for hearing on Defendant's Motion to quash the indictment and to dismiss, and the State's Demurrer thereto, and all witnesses ordered in open court by the Court to return to Court Room #5 on that date and at that time.

November 19th, 1971 - Demurrer filed by the State November 9th, 1971, to defendant's Motion to Quash indictment and motion to Dismiss - Sustained.

W.F.M. 34-[illegible]

November 19th, 1971 - Demurrer filed by the State November 10th, 1971, to amended motion to quash the indictment and to dismiss - Sustained.

W.F.M. 34-[illegible]

Habeas filed Nov 75

February 2nd, 1972 - Defendant in open court and with her attorney, Peter Palughi, and the trial of this case is hereby set for March 29th, 1972.

W.F.M. 35-120

Motion To Dismiss for Lack of Speedy Trial filed by Attorney, Peter Palughi, March 2nd, 1972. [illegible]

[redacted]

[illegible]

Sheet No. 2

CIRCUIT COURT, MOBILE COUNTY (CRIMINAL)

CASE NO. [illegible]

ATTORNEYS	Trial set for:
CHARLES R. BUTLER, JR.	STATE OF ALABAMA
Grand Jury No. 164	VS. OFFENSE CHARGED MURDER FIRST DEGREE
Peter Palughi (App)	EVELYN LOUISE JORDAN
	(JAIL) (x) Jury ( ) N.J.

Date of Arrest: 8/27/71 Race: col Sex: female Age: 11/6/39

BOUND OVER TO GRAND JURY FROM

(x) Inferior Court-Inf. Ct. No. 9206

( ) Recorder's Court-Rec. Ct. No.

( ) Prichard's Recorder's Ct. No.

( ) J. of P. Ct., Precinct No.

( )

Date of Indictment: Oct. 6, 1971

Placed on Docket: Oct. 6, 1971

Arrested by: Ray D. Bridges, Sheriff

Bondsman:

APPEALED FROM

( ) Inferior Court-Inf. Ct. No.

( ) Recorder's Court-Rec. Ct. No.

( ) Prichard's Recorder's Ct. No.

( ) J. of P. Ct., Precinct No.

( )

ORDERS AND JUDGMENT OF COURT

March 10th, 1972 - Motion to Dismiss for Lack of Speedy trial re-set for March 17th, 1972, 11 a.m. Defendant's attorney unable to be in court due to illness in his family.

Marc. 16th, 1972 - On motion of the District Attorney; It is ordered and adjudged by the court that this case be and the same is hereby Nolle Prossed.

3rd 11-19-71 4th 11-23-71

C. C. [illegible]

CIRCUIT COURT, MOBILE COUNTY (CRIMINAL) CASE NO. [illegible]

ATTORNEYS — Trial set for: 11/19/71 - 11/23/71

[illegible] Chas. R. Butler, Jr — STATE OF ALABAMA

Grand Jury No. ____ VS OFFENSE CHARGED — PETITION FOR WRIT OF HABEAS CORPUS

Peter Palughi — EVELYN JORDAN, Petitioner - vs - RAY D. BRIDGES, Sheriff

( ) Jury ( ) N. J.

Date of Arrest — Race — Sex — Age — MINUTES Page Book

BOUND OVER TO GRAND JURY FROM: — Date of Indictment

( ) Inferior Court-Inf. Ct. No.____ — Placed on Docket

( ) Recorder's Court-Rec. Ct. No.____ — Arrested by:

( ) Prichard's Recorder's Ct. No.____ — Residence

( ) J. of P. Ct., Precinct No.____

( ) ____

APPEALED FROM:

( ) Inferior Court-Inf. Ct. No.____

( ) Recorder's Court-Rec. Ct. No.____

( ) Prichard's Recorder's Ct. No.____

( ) J. of P. Ct., Precinct No.____

( ) ____

ORDERS AND JUDGMENT OF COURT.

Petition for Writ of Habeas Corpus filed November 15th, 1971.

Service had on Ray D. Bridges, Sheriff November 15th, 1971

Service had on District Attorney November 15th, 1971/

Hearing on Petition set for November 19th, 1971, at 9:30 AM, Court Room No. 5.

District Attorney's Answer to Petition filed November 16th, 1971.

Hearing on Petition re-cessed at 5:00 P.M., until November 23rd, 1971, at 9:30 A.M.

November 23rd, 1971 - Petition for Writ of Habeas Corpus - Denied.
Oral request to reduce bond - Denied.
Petitioner's attorney, Peter Palughi, in court. HPQ — 34 442

Defendant filed written notice of appeal November 23rd, 1971.

7 7 — Motion filed by defendant November 23rd, 1971, for Transcript to be paid by the State.

3 21
3 30

A P P E A L E D.

CERTIFICATE MAILED TO THE COURT OF CRIMINAL APPEALS [illegible] 23rd, 1971.

November 24th, 1971 - Motion filed by the defendant November 23rd, 1971, for Transcript of Testimony to be paid by the State - Granted. HPQ — 34 443

November 24th, 1971 - Mr. Bruce Howard, Official Court Reporter is hereby ordered to transcribe testimony and proceedings had at the trial of this case to file Transcript of testimony and proceedings with the Clerk of the Circuit Court of Mobile County, Alabama, to be paid by the State. HPQ — 34 443

[illegible] CRIMINAL [illegible] 22nd, 1971.

[illegible] 22nd, 1971.

CERTIFICATE OF DISMISSAL OF APPEAL RECEIVED FROM THE COURT OF CRIMINAL APPEALS [illegible]

Senator HEFLIN. Now, I notice on that docket sheet there was a question of an appeal being taken. Have you checked to see whether or not in the Court of Criminal Appeals there were records filed concerning the issue of the habeas corpus proceeding pertaining to Evelyn Jordan and what might have been the outcome dealing with the appeal? It reflects on it that on November 23rd, the defendant filed written notice of appeal, and I suppose it went up to the Court of Criminal Appeals in Alabama. But do you have any of those records?

Mr. BUTLER. No, I do not.

Senator HEFLIN. You have not looked at those records?

Mr. BUTLER. No, sir.

Senator HEFLIN. All right, sir. Another issue has been brought to our attention which I would like to give you the opportunity to clarify. The issue raised is one that deals with your representation of a Mr. Styron against an oil company. The award was in the amount of about $53,000. Your legal fees amounted to about $25,000. Apparently, there was a controversy between Mr. Styron and yourself pertaining to this amount . Would you give us the facts about this situation and then what disposition was made of that?

Mr. BUTLER. Senator, the actual amount of award was the $50,000-something that you just mentioned, plus another $60,000-something that the oil company had not paid into court. At the time this figure was arrived at, when we paid him his fee or the balance, after we took out a few, that is all that the court, $50,000—there was actually another $62,000 or $67,000 that was in dispute that he later got directly, so he received a verdict in effect of $110,000 or $120,000, plus the monthly runs thereafter, for which we charged this $25,000 fee.

Mr. Styron had come to the Hamilton, Butler law firm before I was a member of that firm and retained the services of a lawyer, Albert Key. When my law firm, Butler & Sullivan, merged with Hamilton, Butler in June of 1984, Albert Key had left the firm, so Mr. Styron was a client without a fixed lawyer in the firm. He had been there almost 2 years with Mr. Key handling his case.

When I came to the firm, Mr. Harry Riddick, who was an oil and gas partner in the firm, asked me to assist in this case, because it would be a litigation case, and I immediately began doing that and met with Mr. Styron and, as I have submitted to the committee staff, from that point on substantial documentation as to the extent and amount of work that was performed, it never occurred to me that Mr. Styron did not know what his fee arrangement was, but it never occurred to him to ask me to reconfirm what my understanding of the fee arrangement was.

The apparent misunderstanding was that we were continuing to bill him hourly on the case and we did so on a regular basis, and I just do not know that he had an appreciation of the amount of time that was put on the case. It was a complex case, with numerous motions, numerous appearances in court before the case was actually tried, and, as the document shows, the Mobile Bar Association rendered an opinion that the amount of the fee was reasonable.

Senator **Heflin**. Did it go to a dispute resolution commission of the Mobile Bar Association, and do you have some documents pertaining to that?

Mr. **Butler**. Yes, sir, I do. On March 23, 1987, they rendered, the Mobile Bar Association Fee Dispute Committee rendered their opinion that the amount of the fee was reasonable, and they did comment that there was a lack of communication, and I would like to ask that the committee have this as an exhibit.

Senator **Leahy**. Without objection, it is so ordered.

[The document referred to follows:]

MOBILE BAR ASSOCIATION
P.O. DRAWER 2005
MOBILE, ALABAMA 36652
(205) 433-9790

March 23, 1987

Mr. Samuel M. Styron
PO Box 1318
Foley, Alabama 36536

Charles R. Butler, Jr., Esquire (for his Firm)
Hamilton, Butler, Riddick, Tarlton & Sullivan
Attorneys at Law
PO Box 1743
Mobile, Alabama 36633

Gentlemen:

This will serve as our Report to you and to the Fee Dispute Committee of the Mobile Bar Association.

As you know, there was a Hearing on this matter, by a Panel of three Fee Dispute Committee Members, on March 11, 1987. Mr. Styron and Mr. Butler were at the Hearing and the Panel consisted of J. Gordon House, Jr., Esquire, William H. Saliba, Esquire, and J. Glenn Cobb, Jr., Esquire.

At the beginning, after the options, functions and procedures were explained, Mr. Styron asked that the Panel hear him and then make a Recommendation. However, neither Party was to be bound by the Recommendation. This was agreed to by all.

This was a lenghty and complicated Hearing with many details. We do not think it would serve any purpose to go into all the facts and claims. These can be condensed into Mr. Styron feeling that he had been over-charged and was not informed of the charges at the correct time. Likewise, Mr. Butler's offerings were to explain the charges and how and why they were not billed correctly or at the correct time

There was never any written Fee Agreement or positive understanding of the Fee to be charged or paid. This lack of understanding was on both Parties. As the case got more involved, Mr. Styron did not know how much he was going to have to pay and Mr. Butler did not know how much he would end up charging.

Regretfully, this is the situation in some cases. The only remedy, though not a total one in setting out dollars and cents exactly, is a constant and open discussion, by both Attorney and Client, of the Fee aspect of the Case --- both asking by the Client and telling by the Attorney. This was not done in our situation and the result of that was our Hearing.

We feel that Mr. Styron had a legitimate reason to be upset about the Fee. This was mainly due to his not receiving one letter from Mr. Butler, not being informed about the amount of the Fee, not knowing how the Fee was charged, not knowing the kind and amount of legal work done and, last but not least, not asking questions regarding the Fees.

The other side of this coin is that the Attorney did not go deep enough into the business of the Fees with the Client, either at the start or later. There was not even a general understanding of this except that work was to be done on an hourly basis. Mr. Butler did keep Mr. Styron, almost perfectly, informed on all other aspects of the Case as it went along. However, Mr. Butler was afflicted by the U.S. Mail and his computer regarding the Fee aspect.

For the result obtained and the legal work done in this Case, we feel that the Fee charged and paid was in no way unreasonable or excessive. The problem was communication. Neither Party could hardly have made a better presentation of their side of the story at the Hearing. Both were very articulate and backed up their clear statements with documents.

As said before, we feel that the problem was communication. When there is an Attorney-Client relationship, there are duties on both sides --- especially, in our case, regarding the Fees. It is the duty of the Attorney to explain, as best he can, his Fees. It is the duty of the Client to get an understanding, by asking questions if needed, of the Fees. It is a mutual duty on both Parties to have the most definite understanding possible at the start and this is to be upgraded and added to as the matter progresses. This was not done in our situation here.

In spite of the "Dispute", it was our feeling that both Parties left the Hearing more informed, more educated, more understanding and more friendly.

From all of this, we can only Recommend that this situation teach all of us a lesson. The next time, both Client and Attorney have got to know, as much as is possible, what they are getting into, what it is going to cost them and what they are going to get out of it.

Sincerely,

J Gordon House Jr.

J. GORDON HOUSE, JR.

WILLIAM H. SALIBA

J. GLENN COBB, JR.

fhs

Senator HEFLIN. Now, there has been an issue raised about hunting rights. Ms. Dorothy Trabits was the income beneficiary of a trust and she sued the First National Bank of Mobile, who was a trustee of the trust, in part charging that the bank had mismanaged the trust property in regards to money charged for hunting rights on the property.

As I understand it, you were a remainderman of the estate and did work for the First National Bank and was one of the individuals who rented the hunting rights from the bank. Involved in this litigation was that there may have been conflicts of interest between you and the estate in that you had got hunting rights on a large number of acres at a dollar an acre. Would you explain this situation and make any comments that you would like to make?

Mr. BUTLER. Yes, sir. There is one misunderstanding the committee staff may have on that point. My law firm, Butler & Sullivan, at the time this all began, which was about 1973, never represented the First National Bank of Mobile and never has.

This hunting lease arrangement arose or began in 1973, maybe 1972, when the remaindermen approached the First National Bank of Mobile, for none of the remaindermen informed any work or legal services, and we leased the hunting rights on a continuation of a lease exactly like my great uncle Paul Danner had had during his lifetime. He had died in about 1969.

The confusion about there being some sort of conflict as to whether I was the lawyer for the First National Bank of Mobile arose because the firm which I am now in, Hamilton, Butler, merged with the Butler & Sullivan firm in June of 1984. Several years prior to that, the AM South Bank of Mobile merged with the First National Bank of Mobile and the Hamilton, Butler firm had done business with AM South for many, many years.

Ms. Trabits filed her lawsuit in 1984, I believe—I have not checked the exact date, but I believe she filed it in 1984—just at the time of the merger, or she may have filed it before the merger, so all of her allegations, all of the issues tried before the circuit court of Mobile, which were ruled favorably as to the AM South Bank—well, let me back up.

The suit she filed was against the First National Bank of Mobile, so she did in fact file suit before the merger of the two banks, and the merger of the two banks took place before my law firm joined Hamilton, Butler. There was never, at the time her suit was filed, never any conflict, and all of those issues were thrashed out by Judge Robert Kendall in his decree of August 27, 1986, ruling that it was perfectly proper for the remaindermen to hunt on the land, and that is the subject of his order of that date, which I would like the committee to have as part of their records.

[The document referred to follows:]

DOROTHY DANNER TRABITS,) IN THE CIRCUIT COURT OF
Plaintiff,) MOBILE COUNTY, ALABAMA
vs.)
FIRST NATIONAL BANK OF MOBILE,) CIVIL ACTION NO CV-83-1352
Defendant.)

ORDER

Plaintiff is the sole income beneficiary of a trust created under the terms of the will of Paul Danner. Defendants are the presumptive contingent remaindermen and the trustee. Plaintiff seeks removal of the trustee and damages from the trustee for breach of fiduciary duty and mismanagement of the trust. The cause was heard on the merits and, after receipt of briefs from the parties, taken under submission. Upon consideration the Court finds as follows:

While Plaintiff's grievances are numerous, they primarily concern three areas: (1) management of the timber on trust property, (2) handling of the hunting rights on the property and (3) expenditures of trust funds in connection with roads, bridges and rights of access. The trust property in question is a tract of some 2,700 acres of hardwood swamp in Baldwin County. Paul Danner created by will a trust under the terms of which the property was to be used for "providing a comfortable living for my daughter [Plaintiff] during her lifetime." The trustee was granted broad discretionary powers in the management of the trust property.

(1) Timber Management. Plaintiff presented testimony of a timber management expert to the effect that he made timber management recommendations to the trustee which, if followed, would have resulted in substantial additional income to the trust. Other experts testifying for the trustee disagreed with the recommendations of Plaintiff's expert. As stated by the latter, timber management is not an exact science and it is a matter of

opinion as to the best way to handle many situations. Clearly, the trustee was guilty of no breach of its fiduciary duty in this regard.

(2) Hunting Lease. This is an emotionally charged issue. Plaintiff is an animal rights activist and some of the remaindermen are hunters who have leased the hunting rights on the property. There is no question but that the trustee could generate greater revenues for the trust by the application of different priorities, but its evidence supports the conclusion that its decision to give greater weight in its choice of lessees to considerations of protecting the property was within its discretionary powers and should not be disturbed by this court. The following from Peach v. First National Bank of Birmingham, 247 Ala. 463, 25 So.2d 153 (1946), is here applicable:

> "'In determining the extent of a trustee's discretionary power, the court may properly have in mind that when a trustor reposes a discretion in a trustee, he does so because he desires the honest judgment of the trustee, perhaps even to the exclusion of that of the court.'"

(3) Roads, Bridges and Access. Here, Plaintiff contends that the funds for these purposes were expended primarily to benefit the hunting remaindermen. The trustee contends that the benefit was to the property in its use for timber production. There is evidence to support each. The Court finds that the trustee acted within its discretionary powers with respect to these expenditures.

To say that the relationship between Plaintiff and the trustee is strained is to understate the matter, and nothing that this Court can do is likely to remedy that situation. However, the Court will try. The trustee is ordered to allow Plaintiff reasonable access to the property at times other than during deer season, spring turkey season and a period of two weeks preceding each. Plaintiff is ordered to do nothing to interfere with the rights of anyone to whom the trustee may lease the hunting rights on the property. The trustee is further ordered to confer with Plaintiff and/or her accountant at least annually and shall, insofar as is consistent with prudent management of the trust, attempt to coordinate trust income to the income tax advantage of Plaintiff.

In all other respects, including Plaintiff's request that the trustee be prohibited from charging its attorneys' fees incurred herein to the trust, the relief sought is denied. The parties shall bear their own costs.

DATED, this the 27th day of August, 1986.

Circuit Judge

Senator **Heflin**. Well, did the lawsuit involve the action of whether or not the renting of the hunting rights to you, that the bank, as trustee, was violating some aspect? What was the contention?

Mr. **Butler**. She contended that the bank leasing to the remaindermen at a lower rental rate than the bank could have gotten had they put the land out for bid, was a breach of the fiduciary duty. Judge Kendall heard testimony from witnesses, both pro and con on that issue, and ruled that the bank's action was proper.

Senator **Heflin**. Now, I understand there is an issue that was raised about some property that was sold for taxes, Coastal Inter-City Health Services, Inc., and that you represented someone who had owned the property originally. I believe this company, that I just named, bought it at a tax sale and there was a redemption process that went through. Then there were letters between the Board of Equalization in an effort after the tax sale to get the taxes lowered, but there was some issue as to whether or not you, in writing a letter, represented this Coastal Inter-City Health Services. Would you explain that situation?

Mr. **Butler**. Yes, sir. Senator, I could go into a great deal of detail, but I would like to suggest that what I have done at the suggestion of Mr. Rainer, is prepare a memorandum for the committee that details the legal position that our law firm took.

Keep in mind that this piece of property was owned by about 15 business and community men in Mobile, one of whom was my father. When my father died in 1982, my sister and I inherited his 4 percent interest, so I was a 2-percent interest owner, and I acted as the attorney for everyone, including myself. It looks like that proves the old adage, "a man who has himself for a lawyer is"—what is it, I have forgot—"a fool for a client."

I do not believe, Senator, that this case has to it the concern that has been expressed to me, because Judge Kendall's order specifically ruled that we, the former owners of the property, were in fact entitled to redeem the property as though it was held by the State of Alabama, not as though it was held by Langan or Coastal Inter-City. So I wrote to the Board of Equalization and sent them a copy of Judge Kendall's order, and the Board knew fully that we were not the Langan group—I call it, it is Coastal Inter-City—but that we were the winners of a lawsuit that gave us the right to redeem that property.

We followed the exact language of the Alabama statute, which is attached to this memorandum, which says that the only people entitled to notice of the Board's hearing are those who file the protest, and that was us. We filed the protest on behalf of all our clients, we being our law firm, and the correspondence from the Board of Equalization was directed to me in response to my protest at my P.O. box; the fact that it contained the old name that appeared on their records, Coastal Inter-City, was a clerical entry, it had nothing to do with the substance of what they were telling me, and this opinion will state—and I would like to offer this, Senator, from the committee's review, as part of my testimony.

Senator **Heflin**. It will be so admitted.

[The documents referred to follow:]

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1836-1888)
THOMAS A. HAMILTON (1844-1907)
J. GAILLARD HAMILTON (1899-1966)
THOMAS A. HAMILTON (1908-1983)
CHARLES R. BUTLER (1881-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 27, 1988

The United States Senate
Committee on the Judiciary
United States Capitol
Washington, D. C.

Re: Charles R. Butler, Jr.
Nomination to U. S. District
Court, Southern District
of Alabama

Gentlemen:

This Committee has posed a question regarding whether the Plaintiffs in that civil action styled Altmayer v. Langan, CV 86-2490 in the Circuit Court of Mobile County, Alabama, had any legal duty to notify the Defendants (hereinafter referred to as "Langan, et al") of their efforts to reduce the ad valorem tax assessment on certain real property at issue in that litigation. In reponse to that inquiry, we respectfully submit the following opinion:

The order of the Circuit Court in the Altmayer v. Langan case, (a copy of which is attached hereto) gives the Plaintiffs the right to redeem the subject property from a tax sale by (1) reimbursing Langan, et al, the record owners of the property, for the amounts they paid for the property when they purchased it from the State, plus any ad valorem taxes they paid since their acquisition of the property and (2) paying to the State all ad valorem taxes that the Plaintiffs would have paid had the property not been sold for taxes, less the sums reimbursed to Langan, et al. The Court's decree therefore fixes the amount that Langan, et al are entitled to receive from redemption of the property. These sums were paid into court by the Plaintiffs at the commencement of the litigation. However, the amounts payable to the State under the Circuit Court's order remain subject to reassessment under Section 40-10-121(c), Code of Alabama (1975), which states as follows:

> Any party having a right to redeem said property, his agents or attorney, shall have the right to file a written protest with the Board of Equalization, objecting to the valuation of said land as placed on said property by the Tax Assessor, setting forth his ground of objection to the assessed value of said property as fixed by said Tax Assessor and the Board of Equalization shall, thereafter, fix a day for hearing said protest by giving to the Tax Assessor and party desiring to redeem, his agents or attorney, at least ten days written notice of the day and place of hearing said petition, and upon the hearing of said cause, the Board of Equalization shall have the right to review the assessed value of said property as fixed by the Tax Assessor and shall fix and determine the assessed value for each of the years subsequent to the year for which such land was sold to the State for taxes, and the Board of Equalization shall certify to the Probate Judge the assessed value of the land so fixed. (Emphasis added)

Upon first reading, it would appear that Section 40-10-121 (a copy of which is attached hereto) applies only when a former owner is redeeming tax-delinquent property from the state, rather than from a third-party purchaser. However, in our unique factual setting, the Circuit Court has ruled that the subject property may be redeemed from Langan, et al, by, in part, paying the delinquent ad valorem taxes to the state -- just as if the state had never sold the property to Langan, et al, and the property was being redeemed directly from the state. Clearly, then, the reassessment procedures offered by Section 40-10-121(c) should be available to the Plaintiffs in this case. Just as clearly, this statute imposes no duty on either the Board of Equalization or the parties seeking to redeem to notify the tax sale purchaser or present owner of the property of the petition for reassessment. The only notice required is ten days notice of the hearing of the petition to "the Tax Assessor and party desiring to redeem, his agents or attorney." Indeed, since the amounts payable to Langan, et al were established by the Circuit Court order and would not be at issue or subject to reduction during the reassessment proceeding, there is no logical reason to require notice to those parties. Although Langan, et al did appeal the Circuit Court order, they elected not to post any supersedeas bond to stay the effect of that order until the Supreme Court enters its ruling. The rights of Langan, et al were accordingly fixed by the Circuit Court order, subject to modification only by the

Supreme Court on appeal, and could not legally be affected by any proceedings before the Board of Equalization. (See ARAP, Rule 8, and ARCP, Rule 62, attached hereto) There is therefore no basis in law for any contention by Langan, et al that they should have received notice of the reassessment petition.

Respectfully submitted,

HAMILTON, BUTLER, RIDDICK,
TARLTON & SULLIVAN, P.C.

BY:
CHARLES R. BUTLER, JR.

John W. Donald, Jr.
JOHN W. DONALD, JR.

David A. Boyett III
DAVID A. BOYETT, III

JAY P. ALTMAYER, et al.,) IN THE CIRCUIT COURT OF
Plaintiffs,) MOBILE COUNTY, ALABAMA
vs.)
MICHAEL D.LANGAN, et al.,) CIVIL ACTION NO. CV-86-2490
Defendants.)

ORDER

Plaintiffs seek to judicially redeem and quiet title to certain real property located in Mobile County which they owned on June 17, 1980 when it was sold for unpaid 1979 ad valorem taxes. There apparently having been no bidder at the sale, title was taken by the State of Alabama. On January 3, 1986 the property was conveyed by the State Land Commissioner to Defendants' predecessor in title by deed reciting a consideration of $86.75. Affidavits on file establish that Plaintiffs have maintained at least constructive possession of the property.

The matter is before the Court on various motions, including Plaintiffs' motion for summary judgment. Plaintiffs contend that they are proceeding under § 40-10-83, Code 1975, and that they are entitled to redemption of the property upon payment to Defendants of such sums, and the interest thereon, as were paid by Defendants or their predecessors in title for the property and for taxes paid by them subsequent to the purchase. Defendants claim that under § 40-10-135, Code 1975, Plaintiffs must in addition pay to Defendants such sums as would be due to be paid to the Tax Collector during the time the State held title, had taxes been assessed during such time. Neither maintains that the taxes for such period should be paid to the Tax Collector. Under Plaintiffs' theory, Plaintiffs would redeem the property and escape payment of such taxes, absent the ability of the Tax Collector to "recapture" the taxes. Under Defendants' theory, such sums would be paid to and retained by Defendants. The Court does not believe that either result is correct.

Judicial interpretation of § 40-10-83 has extended its operation somewhat beyond what might be concluded from a reading of the section. William R. Justice, in Redemption of Real Property Following Tax Sales in Alabama, 11 Cum. L. Rev. 331 (1980), says that, "The text of this statute sits, like a tip of an iceberg, atop a body of case law that transforms the section into an additional and distinct right of redemption." That case law is summarized by Justice as follows:

> "In summation, the Supreme Court of Alabama has evidenced its inclination to support landowners against tax-sale purchasers by creating a method of judicial redemption while purportedly following the wishes of the legislature. An owner who has failed to redeem within three years of the tax sale may still redeem by bringing a suit to quiet title despite the statute's requirement that the suit be against the owners, although the strict procedural requirements of bills to quiet title observed outside the realm of taxation are ignored. This is true whether the tax sale is valid or invalid, and is available without a time limit, provided two requirements are met. First, there must be no suit pending to enforce the purchaser's claim, despite a contrary statutory requirement. Second, though not mentioned in the statute, the purchaser must not have cut off the owner's right by adverse possession."

The statute provides that the redemption amount is "the amount paid by the purchaser at the sale and of the taxes subsequently paid by the purchaser, together with six percent per annum thereon." However, the construction of § 40-10-83 requires that the redeemer also pay the taxes which would have accrued:

> "His right to redeem under section 296, Title 51, Code [now § 40-10-83], assumes that the title passed out of complainant by the tax sale, and he is trying to restablish [sic] it, dependent upon his possession, not necessarily peaceable possession. His right is not affected by his failure to pay the taxes while the title was in the State under the tax sale. If he can redeem at all, it is on the condition that such taxes be paid. * * *" [emphasis added.] Standard Contractors Supply Co. v. Scotch, 247 Ala. 517, 25 So.2d 257 (1946).

As interpreted, § 40-10-83 requires as a condition of redemption payment not only to the tax purchaser of the amounts paid by him, but also to the State of the amounts not collected by it. Therefore, in a proceeding under this section the subrogation provisions of § 40-10-135 are not applicable.

To the extent that § 40-10-135 requires payment of the uncollected taxes to Defendants rather than the State, then such statute, together with § 40-10-134, would appear to run afoul of Art. IV, § 100, Constitution of Ala. 1901, which provides that no obligation or liability to the State shall "be exchanged or transferred except upon payment of its face value." However, it is not necessary to reach the constitutional question for the reasons stated above.

In the event that in further proceedings it is held that Plaintiffs are not required to pay the uncollected taxes to the State or to Defendants, the Court notes that Plaintiffs seek equitable relief. The Court alternatively finds as an equitable condition to redemption that Plaintiffs pay to the Tax Collector such taxes and all applicable penalties and interest.

Summary judgment is granted in favor of Plaintiffs for redemption of the property described in the complaint upon payment to the Tax Collector of all taxes which accrued, or which would have accrued had Plaintiffs retained title, for the tax years 1979 through 1986, together with the interest and penalties thereon, less the amount paid by Defendants' predecessor in title to the State as consideration for the tax deed and any amounts paid by Defendants or their predecessor in title as ad valorem taxes subsequent to receipt of the tax deed, and further conditioned upon payment to Defendants of all sums paid by Defendants or their predecessor in title to the State as consideration for the tax deed and of all sums paid by Defendants as ad valorem taxes subsequent to receipt of the tax deed, with the interest thereon. Title will be quieted and a final decree entered upon receipt of an affidavit establishing such payments.

DATED, this the 30 day of March, 1987.

CIRCUIT JUDGE

of other notice. — Where a transferee of record of a mortgage on land, which mortgage is recorded prior to the purchase of the land by the state at a tax sale, attempts to redeem such land, such act on the part of the transferee of record shows that he has actual knowledge of the tax sale and of the matters which the written notice provided for in this section would disclose, and thus no other written notice is necessary to be given him or a subsequent transferee of the mortgage. Kilgore v. Gamble, 253 Ala. 334, 44 So. 2d 767 (1950).

Only adverse possession cures failure of notice. — If the written notice provided by this section is not given at all, the right to redeem by a mortgagee or his transferee of record will be cut off only by adverse possession. Kilgore v. Gamble, 253 Ala. 334, 44 So. 2d 767 (1950).

Notice by state. — Since this section designates no official to give notice on behalf of the state, it may be inferred that the legislature did not intend to cut off redemption by mortgagees of the class named. All persons buying from the state are charged with notice by the record of the mortgage. Farmer v. Hill, 240 Ala. 416, 199 So. 820 (1941).

Where no notice is given by the state, under this section, to either the original mortgagee or lienholder or their transferee of record, it follows that a subsequent resale by the state of land purchased by it at a tax sale to a person having no prior interest in such land does not cut off the right to redemption then existing in a transferee of record of a mortgage recorded on such land at the time of the tax sale. Kilgore v. Gamble, 253 Ala. 334, 44 So. 2d 767 (1950).

Where failure to give notice is immaterial. — Mere failure of grantees of purchaser of land at tax sale to give mortgagee notice to redeem and knowledge that mortgage through error failed to include land involved were immaterial where grantees did not take title to land until after expiration of period for redemption and there was no showing that purchaser at tax sale had knowledge of error in mortgage. Hester v. First Nat'l Bank, 237 Ala. 307, 186 So. 717 (1939).

If right to redeem from tax sale expires without notice to purchaser of error in description of land in recorded mortgage, it cannot be said that mortgagee, so far as the purchaser is concerned, was entitled to benefits of provision requiring notice to mortgagee to redeem. Hester v. First Nat'l Bank, 237 Ala. 307, 186 So. 717 (1939).

§ 40-10-121. Manner of redemption of land sold to state.

(a) In order to obtain the redemption of land from tax sales where the same has been heretofore or hereafter sold to the state, the party desiring to make such redemption shall apply therefor as hereinafter provided and shall deposit with the judge of probate of the county in which the land is situated the amount of money for which the lands were sold, with interest thereon at the legal rate of interest prevailing at the time said property was sold for taxes, together with the amount of all taxes found to be due on such land since the date of sale, as provided herein, with interest at the legal rate of interest prevailing from maturity of such taxes and all costs and fees due to officers.

(b) Upon application to the probate judge to redeem land where the same has been sold to the state for taxes, which application shall be made on blank forms to be furnished by the land commissioner, the probate judge shall submit such application to the tax assessor of the county in which the land sought to be redeemed is located, and the assessor shall without delay enter on such application an assessment value for each of the years for which taxes are due, subsequent to the year for which such land was sold to the state for taxes, and such assessment value shall be such percentage as established by law of the fair and reasonable market value of such lands as of October 1 of the year or years subsequent to the year for which the land was sold for taxes.

(c) Any party having a right to redeem said property, his agents or attorney, shall have the right to file a written protest with the board of equalization objecting to the valuation of said land as placed on said property by the tax assessor, setting forth his ground of objection to the assessed value of said property as fixed by said tax assessor, and the board of equalization shall, thereafter, fix a day for hearing said protest by giving to the tax assessor and party desiring to redeem, his agents or attorney, at least 10 days' written notice of the day and place of hearing said petition, and upon the hearing of said cause, the board of equalization shall have the right to review the assessed value of said property as fixed by the tax assessor and shall fix and determine the assessed value for each of the years subsequent to the year for which such land was sold to the state for taxes, and the board of equalization shall certify to the probate judge the assessed value of the land so fixed.

(d) The redemptioner shall deposit with the probate judge the amount of money for which lands were sold for taxes, plus the amount due for subsequent years based on the assessment value as required to be fixed herein, and interest, costs and fees as provided in this section.

(e) If any balance remains due to the state upon any lien arising by reason of any installment redemption the payment of which is secured under the provisions of section 40-10-141, the redemptioner shall also deposit with the probate judge the amount of the balance due upon such lien, with interest to the date of redemption.

(f) If the lands sought to be redeemed, or any portion thereof, are situated in any municipality, the redemptioner shall also deposit with the probate judge the amount of any unpaid taxes assessed against the same by such municipality, and an amount equal to any municipal taxes thereon which, subsequent to the tax sale, were not assessed by reason of the fact that such land had been purchased by the state of Alabama, plus interest which would have accrued upon such municipal taxes from the time the same would have otherwise become delinquent, which amounts, with interest, shall be treated and distributed in the same manner as taxes and interest thereon. (Acts 1935, No. 194, p. 256; Acts 1935, No. 526, p. 1113; Acts 1936, Ex. Sess., No. 54, p. 30; Code 1940, T. 51, § 304; Acts 1943, No. 578, p. 580.)

Duties and powers of probate judge as regards city taxes. — The probate judge is not authorized by statute to decline to accept redemption of land sold to state for state and county taxes until redemptioner tenders sufficient funds to redeem from sale for city taxes. City of Opp v. Brogden, 236 Ala. 180, 181 So. 752 (1938).

The probate judge may decline to accept redemption of property, purchased by city at sale for state and county taxes only, unless sufficient sum is also offered to pay taxes, costs and charges due city. City of Opp v. Brogden, 236 Ala. 180, 181 So. 752 (1938).

The probate judge may require one seeking to redeem property, purchased by city at sale for state and county taxes, as well as at sale for city taxes, to deposit sum sufficient to pay all city taxes and redeem property from sale therefor. City of Opp v. Brogden, 236 Ala. 180, 181 So. 752 (1938).

Ineffectual attempt to redeem. — Where a transferee of record of a mortgage on land, which mortgage is recorded prior to the purchase of the land by the state at a tax sale, has the right to redeem the land but ineffectually undertakes such redemption by failing to require the judge of probate to take the steps provided for in this section, and where such redemption was still not effected at the time of

Rule 24 makes proceedings in forma pauperis applicable to civil appeals and specifically states that no security shall be required in such appeals.

RULE 8. STAY OR INJUNCTION PENDING APPEAL

(a) Stay by Supersedeas Bond. The appellant shall not be entitled to a stay of execution of the judgment pending appeal (except as provided in Title 7, § 799, Code, and ARCP Rule 62(e)) unless he executes bond with good and sufficient sureties, approved by the clerk of the trial court, payable to appellee (or to the clerk or register if the trial court so directs), with condition, failing the appeal, to satisfy such judgment as the appellate court may render, when the judgment is:

(1) For the payment of money only, in an amount equal to 150% of the amount of the judgment if the judgment does not exceed $10,000.00, or 125% if the judgment exceeds $10,000.00;

(2) For the payment of money and also for the performance of some other act or duty, or for the recovery or sale of property or the possession thereof, in such sum, in addition to the sum required for money judgments only in (1) above, as the trial court may in writing prescribe; or if appellant wishes to supersede the judgment as to the payment of money only, the requirements of (1) above shall apply;

(3) Only for the performance of some act or duty, or for the recovery or sale of property or the possession thereof (or if the judgment includes the payment of money and appellant does not wish to supersede the judgment in that respect), in such sum as the trial court may in writing prescribe.

The approval of the supersedeas bond by the clerk of the trial court, unless contested by the opposing party, shall constitute a stay of the judgment when the judgment is for the payment of money only, or the payment of money and some other act and the appellant wishes to supersede the judgment as to the payment of money only. In the event the clerk declines to approve the bond, or his approval is contested, the requirements of (b) below shall apply.

(b) Stay Must Ordinarily Be Sought in the First Instance in Trial Court; Motion for Stay in Appellate Court. In a civil action, application for a stay of the judgment or order of a trial court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the appellate court in which the appeal is pending, but the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such photocopied parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the appellate court.

When the judgment or order of a trial court is for the payment of money only, the filing and approval of a supersedeas bond conditioned as required by law shall operate to stay and suspend the execution of such judgment or order. The action of the clerk of the trial court in either approving or refusing to approve a supersedeas bond shall be subject to review by the trial court.

(c) Stay May Be Conditioned Upon Giving of Bond; Proceeding Against Principals and Sureties. Relief available in the appellate court under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If security is given in the form of a bond or other undertaking with one or more sureties, each principal and each surety, jointly and severally, submit themselves to the jurisdiction of the trial court and irrevocably appoint the clerk of the trial court as their agent upon whom any papers affecting their liability on the bond or undertaking may be served. Their liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and such notice of the motion as the trial court prescribes may be served on the clerk of the trial court, who shall forthwith mail copies to each principal and each surety if their addresses are known.

(d) Stays in Criminal Cases.

(1) *Death.* When pronouncing a sentence of death, the trial court shall not set an execution date, but it may make such orders concerning the transfer of the inmate to the prison system as are necessary and proper. The supreme court shall at the appropriate time enter an order fixing a date of execution, not less than 30 days from the date of the order, and it may make other appropriate orders upon disposition of the appeal or other review. The supreme court order fixing the execution date shall constitute the execution warrant.

(2) *Imprisonment.* A sentence of imprisonment or hard labor for the county or to the penitentiary shall be stayed if an appeal is taken and the defendant elects not to commence service of the sentence or is admitted to bail.

(3) *Fines.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court or by the appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) *Probation.* An order placing the defendant on probation shall be stayed if an appeal from a judgment of conviction is taken, and the time while such appeal is pending shall not be credited as service of the probationary sentence.

(Amended effective February 4, 1985.)

Committee Comments

Subdivision (a) provides for the stay of execution of a judgment pending appeal in three situations: (1) for payment of money only, (2) for payment of money and performance of some other act or duty and (3) for performance of some act or duty other than for payment of money. In so providing, it supersedes Title 7, §§ 793, 794 and 795, while preserving the exceptions provided in Title 7, § 799 (married woman exemption) and ARCP Rule 62(e) (State of Alabama exemption).

Subdivision (a) basically restates Title 7, §§ 793, 794 and 795. It modifies a previous statutory requirement as to the amount of the supersedeas bond required where the judgment is for the payment of money only or for the payment of money and for the performance of some other act and the appellant wishes to supersede the judgment as to the portion of the judgment for money only.

The remainder of Rule 8 sets forth substantially the provisions of FRAP Rule 8, but the provisions dealing with civil and criminal actions are specifically separated to deal with the state's circumstances.

Rule 8 makes specific the case law rule that the principal as well as the surety is subject to summary proceedings on a bond given under this rule or under Rule 7. In this connection, see 9 Moore's Federal Practice 1308 (2nd Ed.). By specific reference, bonds given under Rule 7 are made subject to this summary enforcement.

Subdivision (d) is based both on prior state practice and on Rule 8(d) of the Federal Rules of Criminal Procedure (FRCrimP).

See Committee Comment on death sentences. Rule 39(c).

See ARCP Rule 62, for companion provisions.

Committee Comments to amendment to Rule 8(d)(1), effective February 4, 1985

Subdivision (d)(1) supersedes Code of Alabama 1975, § 12-22-243; § 15-18-80; that clause in § 15-18-82(a) reading "not less than 30 nor more than 100 days from the date of sentence, as the court may adjudge,"; the second and third sentences of § 15-18-84(a); and the second and third sentences of § 15-18-84(b). It is based on the recognition that appeal is automatic in death penalty cases, see § 12-22-150, § 13A-5-55, and Rule 39(c), A.R.A.P., and that the supreme court is in the best position to set an execution date and enter any necessary stays. In the limited circumstances described in § 15-16-23, the trial court has the authority to stay and reset the execution date, and in such a case the trial court's order resetting the date would constitute the execution warrant.

RULE 9. RELEASE IN CRIMINAL CASES

(a) Review of Orders Respecting Release Entered Prior to a Judgment of Conviction. A review authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the trial court shall state in writing the reasons for the action taken. The review shall be heard without the necessity of briefs upon such

Committee Comments

The theory of these rules generally is that procedure is a practical means to an end, the requirements of which should be no more exacting than efficiency requires. See Sunderlund, the Problem of Appellate Review, 5 Tex.L.Rev. 126, 146–8 (1927). This rule, which requires courts to ignore procedural errors save where they have affected the substantial rights of the parties, should be read in connection with Rules 1 and 8(f), calling for liberal construction of the rules and of pleadings thereunder, as well as such rules as 4(h), 13(f), 15, 21, 32, 59, and 60, by which amendments of the pleadings, process or service, correction of mistakes, granting of new trials, etc., is all contingent upon whether or not the error was substantial. See 7 Moore's Federal Practice, §§ 61.02–61.12 (2d ed. 1971); 3 Barron & Holtzoff, Federal Practice and Procedure §§ 1351–1357 (1958).

In order for the mandate of this rule to be workable, it must be considered applicable to appellate review of actions in the courts covered by these rules, as well as to the trial of the actions themselves. The cases have so held. Illinois Terminal R. Co. v. Friedman, 208 F.2d 675, 680 (8th Cir.1953), rehearing denied 210 F.2d 229; 7 Moore's Federal Practice § 61.11 (2d ed. 1971); 3 Barron & Holtzoff, Federal Practice and Procedure § 1357 (1958). The problem should be largely academic in Alabama, for Rule 45 of the Revised Rules of Practice in the Supreme Court, though differently worded, seems to state the same policy as does Rule 61 of these rules.

This Committee rejects certain Federal cases liberally applying the Harmless Error doctrine in their conclusion that judicial commentary on the evidence was error without injury. The likelihood of such cases arising in Alabama should be much less frequent than in Federal practice because these rules, unlike the Federal Rules, contain an express prohibition against judicial commentary on the evidence. See Rule 51.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay; Exceptions. Except as stated herein or as otherwise provided by statute or by order of the court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an interlocutory or final judgment has been rendered granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of an appeal from such judgment upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. The power of the court to make such an order is not terminated by the taking of the appeal.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the State of Alabama or Agency Thereof. When an appeal is taken by the State of Alabama or an officer or agency thereof or by direction of any department of the government of the State of Alabama and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

(f) [Omitted].

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment Upon Multiple Claims or as to Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(dc) District Court Rule. Rule 62 applies in the district courts except that (1) the references therein to injunctions and receivership actions are deleted, (2) the time period of 30 days in Rule 62(a) is reduced to 14 days, (3) provisions of Rule 62(b) are modified so as to provide for an automatic stay of execution pending a ruling on any motion for a new trial or to alter or amend a judgment or for amendment to the findings or for additional findings, (4) Rule 62(c) does not apply in the district courts, and, (5) the provision for a supersedeas bond in Rule 62(d) is deleted and Rule 62(d) is modified so as to require only a bond for costs or affidavit of substantial hardship, approved by the court, in lieu of said bond.

Committee Comments

The automatic stay, provided by subdivision (a), is intended to give the party time to prepare for appeal or to attack the judgment by motion before enforcement of the judgment is had. 7 Moore's Federal Practice § 62.03 (2d ed. 1971). Since the time to

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE [illegible]

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
CRAIG S. PITTMAN
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.

PETER HAMILTON [illegible]
THOMAS A. HAMILTON [illegible]
J. GAILLARD HAMILTON [illegible]
THOMAS A. HAMILTON [illegible]
CHARLES R. BUTLER [illegible]
CABLE ADDRESS: HAMILTONS
TELEX: 782007

April 21, 1987

Mobile County Board of Equalization
Honorable August E. Argiro, Chairman
George Hartzes, Member
Leon House, Member

Re: Key No. 710225 Assessment No. CO-108651; Property located in Mobile County, Township 29, Area 3, Section 7, Quarter Section 2, Block 000, Parcel 004, Assessed in the name Altmayer, Mrs. Antionette P., et al.

Gentlemen:

This is not a typical protest. It is perhaps unique in the history of Mobile County and the State of Alabama because for the first time a taxpayer is coming before the Board seeking relief, when prior to March 30th, 1987, none would have been available. On that date, Circuit Judge Robert Kendall ruled that the Plaintiffs (who are also the protesting taxpayers before this Board) could redeem property which had been sold for taxes to the State in 1980, held by the State for over five years and then sold to a third party in 1986 as part of a bulk sale. Judge Kendall's Order permits the Plaintiffs to redeem by (a) paying to the third party the amount the third party paid to the State for the property and (b) paying to the Mobile County Tax Collector the taxes that would have been due had the property remained on the tax roles after the 1980 sale. The third party, Coastal Inter-City Health Services, and now its assignees, Michael Langan and Mark Haynes (herein called "Langan") contended that whereas their deed from the State showed a consideration of only $86.75 that they could require the Plaintiffs to redeem from them by paying to them some $27,322.31 in taxes and interest that would have been due had the property remained on the tax roles. The Plaintiffs are Jay P. Altmayer & AmSouth Bank N.A. as Co-Trustees under the will of Marvin C. Altmayer, Jay P. Altmayer, Nan P. Altmayer, John Strauss, Albert Metzger, Larry Goldsmith, Melvin

Goldsmith, Charles B. Arendall, Jr., Dr. Jack Hyman, Estate of J. F. Pate, Jack Laidlaw, Herman Maisel, AmSouth Bank N.A. as Trustee under the will of Robert Bacon, Charles R. Butler, Jr., Venetia B. Friend, Morgan Guaranty Trust of New York as Trustee under the will of Clarice Blumenthal and Florence Sossaman.

We, as former owners having a right to redeem, file this written protest so that we can ascertain what amount is due the Tax Collector "of all taxes which accrued, or which would have accrued had Plaintiffs retained title for the years 1979 through 1986 ..." (See page 3 of Judge Kendall's Order attached hereto as Exhibit "A") We also attach hereto as Exhibits "B" and "C" the original Bill of Complaint filed by the Plaintiffs in the Circuit Court and the deed from the State of Alabama to Coastal Inter-City Health Services dated January 3, 1986.

The problem, as you can see, has been aggravated by the Langan group contending that the amount of delinquent taxes and interest amount to $27,322.31 which is based on assessments made on the property for years during which the taxpayers were unaware of such assessments and therefore unable to protest. Also from 1980 forward the title was in the State by virtue of the 1980 tax sale and none of the taxpayers were notified until 1986 when Langan's group bought the property from the State and attempted to collect the $27,322.31 from them.

So, for the first time, the Tax Collector will be able to collect taxes on property for the benefit of the State and County where previously purchasers from the State were able to require redeeming taxpayers to pay such purchasers these back taxes which was of no benefit to the State and County.

Given this unique opportunity, the taxpayers wish to assist the Board in evaluating the proper amount of taxes that should have been assessed on the property during the years that the Court has now ruled the Tax Collector is entitled to collect. In this connection, the taxpayers have retained the services of a qualified appraiser, Edward F. Travis, who's research on the property has discovered a number of factors that have effected the value of the taxpayers' property over the years and in his opinion the total value that should have been assigned to the property is $172,882.00, not the $300,000.00 currently being shown as the market value of the subject property. We are asking that the Board also give the taxpayers retroactive relief to and including 1979 for the fair market value of the property and that an adjustment in the tax assessment be made accordingly.

We look forward to working with the Board and we will be glad to furnish any additional information you need to assist you in this opportunity.

Respectfully submitted,

HAMILTON, BUTLER, RIDDICK,
TARLTON & SULLIVAN, P.C.

Charles R. Butler, Jr.
Attorney for Owners

CRBJR:aen
Attachments

BOARD OF EQUALIZATION
MOBILE COUNTY
COURT HOUSE ANNEX
MOBILE, ALABAMA 36602

AUGUST E. ARGIRO, CHAIRMAN
GEORGE HARTZES
LEON HOUSE

PHONE [illegible]

MAY 8, 1987

COASTAL INTER-CITY HEALTH SERVICES, INC
c/o CHARLES B. BUTLER, JR.
P O BOX 1743
MOBILE, AL. 36633

Dear Property Owner:

The Board of Equalization has made a special preliminary review of your protest, and their decision is:

	Present Value	Board Value	Market Value
02 29 03 07 2 000 004 COM INT N/L GA PAC AVE & E/L I-65 RUN E 41 FT(S) NELY 303.11 FT TO POB CONT ELY ETC.	75,000	40,000	200,020

Kindly sign the form below and return to this office in the stamped, addressed envelope provided. Be sure to check your approval or disapproval of these values. These values will become final if they are approved. Please keep the top portion of this letter for your records.

CODE NO. 350

....

DATE 5/11/87 CODE NO. 350

GENTLEMEN:

I ( ) Approve (X) Disapprove the values placed on my assessment due to my protest filed with the Board of Equalization. * Qualified: See attached Letter

(SIGNED)
~~COASTAL INTER-CITY HEALTH SERVICES, INC~~

PLEASE RETURN
AT ONCE

BY:

ADDRESS P.O. Box 1743

CITY & STATE Mobile, Al 36633

ENC: Stamped, self-addressed envelope

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
CRAIG S. PITTMAN
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.

PETER HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
J. GAILLARD HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
CHARLES R. BUTLER ([illegible])

CABLE ADDRESS: HAMILTONS
TELEX: 782007

May 11, 1987

Mobile County Board of Equalization
Honorable August E. Argiro, Chairman
George Hartzes, Member
Leon House, Member

Re: Key No. 710225 Assessment No. CO-108651; Property located in Mobile County, Township 29, Area 3, Section 7, Quarter Section 2, Block 000, Parcel 004, Assessed in the name Altmayer, Mrs. Antionette P., et al; Code No. 350

Gentlemen:

In response to your prelimnary review of May 8, 1987 we enclose herein a qualified disapproval. I say qualified, because we agree with the Board's values, but since it only applies for the current year we are seeking relief under the provisions of Section 40-10-121(c) of the Alabama Code for the year subsequent to the year for which the land was sold to the State for taxes. We enclose a copy of that Code section for your consideration.

We respectfully request an opportunity to appear before the Board and ask for that relief.

Very truly yours,

HAMILTON, BUTLER, RIDDICK,
TARLTON & SULLIVAN, P.C.

Charles R. Butler, Jr.

CRBJR:aen
Enclosure

BE 13 (Revised 3/15/82)

THE STATE OF ALABAMA

BOARD OF EQUALIZATION

MOBILE COUNTY

TO: COASTAL INTER-CITY HEALTH
SERVICES, INC
c/o RANDY BUTLER
P O BOX 1743
MOBILE, AL. 36633

DATE MAY 21, 1987

Dear Sir: (Or Madam)

The Secretary, Board of Equalization acknowledges receipt of your written protest to the proposed change in the value of your property as described in the notice sent to you recently.

This matter is being set for oral hearing before the Board of Equalization at its office in the County Courthouse on the 3rd day of June (Wednesday) at 2:15 ~~A. M.~~ P. M.

The following evidence will be needed at this hearing and you should come prepared to supply this evidence:

(A) Information pertaining to the property and the date this property was purchased by you.

(B) The amount of any mortgages which have been placed upon the property.

(C) The cost of any improvements added to the land since it was acquired by you.

(D) Evidence of current market value of your property and comparable property in the same neighborhood.

Yours very truly,

MRS. LILLIAN A. FEW
Secretary, Board of Equalization

690-8594

MICHAEL D. LANGAN
ATTORNEY AT LAW
267 HOUSTON STREET
MOBILE, ALABAMA 36606

Phone 478-3203

November 25, 1987

Mr. Charles R. Butler, Jr.
Attorney at Law
P. O. Box 1743
Mobile, Alabama 36633

Dear Randy:

Please find enclosed a copy of a Complaint for Declaratory Judgment that M & R Properties, Inc., Coastal Inter-City Health Services, Inc., Mark A. Haynes and myself will shortly be filing in the Mobile County Circuit Court.

Please advise in writing by December 1, 1987 as to whether or not you are willing to accept service of the complaint on behalf of the Altmayer group defendants.

Wishing you Happy Holiday, I remain,

Sincerely,

Mike Langan

MDL/rgl

Enclosure

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1889-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1891-1962)

CABLE ADDRESS: HAMILTONS
TELEX: 782007

November 30, 1987

Michael D. Langan, Esquire
267 Houston Street
Mobile, Alabama 36606

Dear Mike:

This will acknowledge receipt of your letter of November 25th wherein you enclose a proposed Complaint to be filed against the Altmayer group and the Board of Equalization seeking a reversal of the Board's reduction of the assessed valuation of the property subsequent to the year in which the property was sold for taxes. In that proposed suit you also ask for costs and attorneys' fees.

I would like to remind you that the legislature passed a Frivolous Lawsuit Act (Act No. 87-186) and that Act provides that if a suit is filed "without substantial justification" that any party or attorney who brought the action may be assessed with costs and attorneys' fees.

Our firm finds itself at a loss to understand how you feel this new proposed litigation is with justification when Judge Kendall's ruling clearly establishes that you are not entitled to collect any back taxes. Although you have appealed that ruling, you did not post a supersedeas bond, and the ruling still stands and is the law of this case. If you were to file such a suit in my judgment it would be immediately dismissed and the Frivolous Lawsuits Act would come into effect.

It would seem to me that with the appeal being heard as quickly as it is before the Supreme Court, that the best course of action for you to follow would be to withhold filing the suit until the Supreme Court rules. We feel that this is a reasonable course of action for you to take and would have to assume that if you take any other course of action, that it would be for an improper purpose and create only unnecessary and needless litigation.

Very truly yours,

HAMILTON, BUTLER, RIDDICK,
TARLTON & SULLIVAN, P.C.

Charles R. Butler, Jr.

CRBJR:aen

MICHAEL D. LANGAN
ATTORNEY AT LAW
367 HOUSTON STREET
MOBILE, ALABAMA 36606

Phone 478-5203

December 1, 1987

Mr. Charles R. Butler, Jr.
Attorney at Law
P. O. Box 1743
Mobile, AL 36633

Dear Randy:

In response to your letter of November 30, 1987, I am agreeable to withholding the filing of the lawsuit until after the Supreme Court rules. If by chance the Supreme Court should uphold Judge Kendall's "contortion" of the law, we will proceed with the lawsuit as a "taxpayer" lawsuit, either individually or through the appropriate public official. It is my honest belief that the Board's action is without legal support as set forth in the proposed complaint. My failure to take action would make me an accessory after the fact to a great injustice to the taxpayers of this County.

As a side note, your letter of April 21, 1987, addressed to the Board of Equalization, clearly indicates that you realize that Judge Kendall's ruling is at least "novel". I must also add that your failure to foward mail addressed to my client is in my opinion highly unethical.

I will contact you again after the Court issues a ruling to ascertain whether or not you will accept service for the Altmayer group.

Sincerely yours,

MDL/rgl

Senator **Heflin**. The committee has got a letter which was addressed to you from Michael D. Langan, attorney-at-law, in Mobile, in which he in effect is writing you, dated December 1, 1987, about this matter. He says that he represented Coastal Inter-City Health Services, Inc., and in the letter there is a statement from him, after he discusses other things, he says, "I must also add that your failure to forward mail addressed to my client is in my opinion highly unethical." What is your response to that?

Mr. **Butler**. My response to that is—and I have submitted to the committee the letter which Langan's letter responds to, which is a November 30, 1987 letter that I wrote to Mr. Langan, when Mr. Langan found out that the property taxes had been lowered at our request, he took the position that we had not notified him or the Board—actually, he took the position that the Board had not notified him and he was going to file a lawsuit against not only the Board but against all of the property owners, and I wrote him back and I suggested to Mr. Langan that he would be making a mistake, under the Alabama Legal Accountability Act, which is known as the Frivolous Lawsuit Act, because of the fact that he, through his neglect, had failed to file a supersedeas bond at the conclusion of Judge Kendall's order, and accordingly had in effect, as our opinion states, was not entitled to any notice for a second reason, not just the statutory reason I cited earlier, so Mr. Langan to this day, when he wrote me back that letter on December 1st, he was responding to my suggestion that his suit had no merit, raising these very same issues which you are hearing today, and he agreed because he has not filed that suit today.

Yet, as a parting shot, he says what I did was unethical, yet there has been no complaint before the bar association or anyone at this point, other than this committee has brought it to my attention.

Senator **Heflin**. But did he represent the Coastal Inter-City Health Service, was that his client?

Mr. **Butler**. Coastal Inter-City Health Service bought the property from the State of Alabama in 1986, at a tax sale, and they were required not to give anybody notice and they did not. So he later sold it to himself and Mark Haynes, and they were actually the parties who held title to it at the time of suit with Judge Kendall, but Coastal Inter-City Health Service and Mark Haynes had been ruled by Judge Kendall to have no interest in the property and we followed the statute, which said simply notify the redeemers, and that is us, the plaintiffs.

Senator **Heflin**. Well, did you receive any mail that was addressed to Coastal Inter-City Health Service, Inc., from the Board of Equalization——

Mr. **Butler**. No, sir.

Senator **Heflin** [continuing]. Which was addressed in care of you at your post office box?

Mr. **Butler**. Well, I took that to mean, because the substance of the letter was directed in response to the letter of protest that my firm had written to the Board on behalf of the redeeming property owners. They sent it to me at my address and they had at the top of it Coastal Inter-City Health Services. When I saw that, I lined it out, because that was not who the property should have been carried on the books on. Perhaps hindsight tells me I should have been a little more explanatory about it, but I thought I had been when I originally sent the Board the copy of Judge Kendall's decree.

Senator **Heflin**. I believe that is all I have.

[The statement of Senator Heflin follows:]

STATEMENT OF SENATOR HOWELL HEFLIN
INTRODUCTION OF RANDY BUTLER
NOMINATION HEARING -- JUNE 29, 1988

MR. CHAIRMAN:

I AM PLEASED TO PRESENT TO THIS COMMITTEE, CHARLES RANDOLPH BUTLER, WHO HAS BEEN NOMINATED BY THE PRESIDENT TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA.

ALTHOUGH RANDY WAS BORN IN NEW YORK HE GREW UP IN ALABAMA AND RETURNED TO MOBILE ALABAMA AFTER COMPLETING HIS EDUCATION. RANDY GRADUATED FROM WASHINGTON AND LEE UNIVERSITY IN 1962 WITH A DEGREE IN ECONOMICS. HE RECEIVED HIS LAW DEGREE FROM THE UNIVERSITY OF ALABAMA SCHOOL OF LAW IN 1964 AND SINCE THAT TIME RANDY HAS BEEN INVOLVED IN THE PRIVATE PRACTICE OF LAW, AND PUBLIC SERVICE, AS BOTH AN ASSISTANT PUBLIC DEFENDER AND DISTRICT ATTORNEY OF MOBILE COUNTY.

RANDY SERVED AS DISTRICT ATTORNEY FROM 1971 TILL 1975 AND DURING THAT TIME RANDY RESTRUCTURED THE DISTRICT ATTORNEY'S OFFICE AND WAS RESPONSIBLE FOR CONVENING THE MOBILE COUNTY GRAND JURY MONTHLY RATHER THAN TWICE A YEAR, AS WAS THE PREVIOUS PRACTICE. THIS RESULTED IN MORE SPEEDY TRIALS, EVEN THOUGH AT THAT TIME ALABAMA DID NOT HAVE A SPEEDY TRIAL ACT.

SINCE LEAVING PUBLIC SERVICE IN 1975, RANDY HAS PRACTICED LAW AND IS CURRENTLY WITH THE FIRM OF HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN, P.C. IT IS MY UNDERSTANDING THAT WHILE THE PRACTICE IS A GENERAL CIVIL PRACTICE, RANDY HAS SPECIALIZED IN THE AREA OF REAL ESTATE AND OIL AND GAS LAWS.

I KNOW THAT RANDY IS WELL RESPECTED IN THE MOBILE COMMUNITY AND IT IS EVIDENT BY HIS NOMINATION THAT HE HAS A FINE REPUTATION AS AN ATTORNEY.

RANDY I WOULD LIKE TO WELCOME YOU TO THIS HEARING AND TO CONGRATULATE YOU ON YOUR NOMINATION TO THE FEDERAL BENCH. IT IS AN ASPIRATION OF MANY ATTORNEYS BUT ONE THAT FEW ATTORNEYS WILL EVER FULFILL.

BECAUSE A FEDERAL JUDGESHIP IS A LIFETIME APPOINTMENT, IT IS IMPORTANT FOR THIS COMMITTEE TO THROUGHLY INVESTIGATE EACH AND EVERY NOMINEE AND I COMMIT MYSELF TO CAREFULLY AND FAIRLY CONSIDER ALL EVIDENCE.

THANK YOU MR. CHAIRMAN.

Senator HEFLIN [presiding]. Thank you, Mr. Butler.

We will now call Mr. Bill Travis. Would you raise your right hand: Do you solemnly swear that the testimony that you give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TRAVIS. I do.

TESTIMONY OF WILLIAM T. TRAVIS, MOBILE, AL

Senator HEFLIN. Mr. Travis, if you would, state your name and make any statement that you wish to make.

Mr. TRAVIS. My name is William T. Travis. I am from Mobile, Alabama.

Let me say first, gentlemen, it was not my wish to be here. I was called upon first by the FBI, then by members of this committee, it is plainly a matter that I did not have a lot of choice in, so I am here.

The first matter that I would cover would be the matter of Barbara Wright. I arrested her, along with Det. Richard White or Deputy Richard White. At the time, we were conducting a drug search. We found a very distinctive gun at that time, a stainless steel model .38 Smith & Wesson, of which there were very few on the street. Nobody but officers could get them.

We ran this through the NCIC, and we got a hit back on it. It belonged to an undercover State narcotics agent named George McKee, who was on the task force that Mr. Butler mentioned at that time. It was a joint State, Federal, county, city task force.

I had never met Mr. McKee up until that time. I returned the gun to him and found out the particulars. I charged Barbara Wright with robbery. We knew she was big, but until I got to questioning her and she began to tell me things, she was bigger than I had believed that she was.

She gave me this murderer, along with the bloody clothing worn by the two women that committed the murder, she told me where the gun was, in Selma, AL, who had it. I went to Mr. Butler with this and gave it to him. It was a city case and it was not our policy to embarrass anybody. I went to him and I went to them with it, as the sheriff told me to.

At that time, she began to give me some heroin addresses. She began to tell us about two city officers that were involved with Noble Beasley or Bip Beasley, as he was known at that time, who was the local bad boy, and I posted Mr. Butler from time to time on this.

We worked to the point that whenever her trial would come up, with her lawyer, and I believe it was for the arraignment, she told us that she would give us the big man across the street—I will not name him, but she said she would give us the two city detectives—and several other lesser people that we all knew to be in the drug business.

Now, the man across the street we did not know. At that time, speculation was rife in the legal and law enforcement community, and there was——

Senator **Heflin**. Now, the man across the street, you were in the court house and is the city hall across the street, is that the—what do you mean by "the man across the street"?

Mr. **Travis**. Well, the city hall, sir, is across the street, and her attorney, John Coleman, said, "Barbara, be more specific, what building are you talking about across the street?" She said, "City hall." She told us that she would give us all of this, that she would wear a wire. She told us that she was the courier from Mobile, at times to New Jersey and at times to New York, that brought the drugs back in at the orders of the man across the street, she would be taken to the airport by one or both, generally one of these detectives in question. When her flight would come in, they would be waiting for her.

She showed Officer White and I a corset or girdle-type affair that she could carry 5 pounds of heroin in and it made her look like she was pregnant or expecting. She would wear it up stuffed with paper, where if she met any of the same people coming back, they would not think she got awfully pregnant overnight.

This detective would meet her, he would either bring her back to where she would talk to the man across the street at various places, or he would tell her where the man across the street said to take the drugs to, most of the time to Beasley or a Beasley connection, and she would take it to him.

Now, at this time when she made us this offer, George McKee, a State undercover drug agent who had been robbed and an attempt was made to kill him that night, he was there as part of the case, he was all for it. I said, "George, do you think you ought to call your people in Montgomery, your superiors, and get the okay?" He said, "I don't need an okay for that, I know what they'll say."

Also, at that time one of the officers Mr. Butler mentioned—his name slips me—he was the Internal Revenue Department's donation to the task force, and we all worked together. We called on each other for information, we shared information. We did not tell everybody everything, but we basically knew what each other was doing, and this I cannot understand, the need for secrecy or not using Barbara, because she was telling us what all of us was working on.

Be that as it may, that is that case. The Evelyn Jordan case is the next case——

Senator **Heflin**. Before you leave that, now, Mr. Butler has testified to the fact that you did come to him and that you did tell about Barbara Wright relative to these matters. But he says that he went to the FBI, the Internal Revenue Service and the Department of Justice, or that he knew that they were conducting an investigation themselves, and told them. They were the ones in effect who made the decision not to use Barbara Ann Wright, rather than Mr. Butler himself. Now, what do you say in response to this?

Mr. **Travis**. I say that I was very upset that George McKee, who was a State contribution to the drug task force that was going at that time, he was visibly upset, very upset, he told Mr. Butler that he was, his superiors wrote on the matter, requesting that he reconsider and let us use her, the fellow who is now a lawyer in Gulfport. At that time, he was with the Internal Revenue Service and he was their donation to the task force. He was waiting for the outcome of it. He was upset about it.

As far as a letter or whatever now, I have not been in touch with him for a long, long time, but I do know that at that time we all sat down and had a meeting, the Federal Internal Revenue man, George McKee, who was the State drug agent, and three or four of my deputies and detectives, and myself about who could we go to, who could we talk to that would maybe get Randy to reconsider.

At that time, sir, 90 percent of our criminal activity in Mobile, rape, robberies, mostly robberies and murders and larceny and that kind of thing were drug related. The drugs, it seemed like they almost jumped on us overnight, and it was an overpowering problem. We knew where the problem was, but we had not been able to get to it enough to really hit it a lick and give us a chance to cut the head off of it.

Senator **Heflin**. Go ahead, sir. You were going on to another case, I believe.

Mr. **Travis**. The Evelyn Jordan case, through this Barbara Wright case, she told me about that and told me who actually committed the murder. Later she told me, in fact, "I have got the clothes at the house, they came to the house to change clothes that night and they never have picked them up," and I said, "Do I need a search warrant or will you sign a waiver willingly giving me those clothes if I take you back out to the house?", and she said she would. I prepared the document and she signed it and I took her out of the jail, took another officer with me, we went to her house. She gave me one of the girl's pair of shorts and a blouse and a pair of underwear. The other girl, she gave me a blouse and a pair of shorts. They were all very bloody. I put them in separate bags and brought them in. I brought them to the State toxicologist and he said that it was human blood and tied it to Mr. Rhoten, who was the victim, tied it to his car by fibers and various means.

At that time, I had arrested the two women who actually committed the murder, through Barbara's information and then through information that one of the girls, the shooter, sent a letter out of the jail telling me about the other girl, how it happened. When I talked to her, I found out that there were quite a few things she had not told me, and she went on and told me the whole story. She admitted she shot him.

At that time, I had the women down in the chapel, which was a lockup where we could work, and I showed each one of them the clothes. Each one of them identified her clothes and signed a tag that I had stapled to them, that they had viewed the clothes, they were their clothes, they were the clothes that they were wearing the night that they murdered Mr. Rhoten. They even explained how the blood happened to get on the various areas and why there was so much of it.

I took them back up. As this was developing, I would take it to Mr. Butler. Mr. Butler told me on one occasion, "What is it with you? She is just an old black woman up there, I doubt if anybody has missed her yet." And he also said, "You don't know what you're asking me, asking me to quash my own indictment," and I tried to explain to him that, Randy, it is going to be more honorable to quash your own indictment and reindict the two that we have already got in jail and have confessed, they have signed waivers, we have letters from them wanting to plead guilty and get out jail and get on up to the pen and start doing their time, we have all of the physical evidence." I took it all down to Dr. Grubbs and he went over it and he was the man with the final say, we have all of this. "You can look real good, you can turn loose an innocent woman, you can indict the guilty ones, you won't even have to work at the trial because they want to plead guilty." But he would not move.

I continued to go to him with additional information, the letters they wrote me from the jail I took down to Mr. Butler and showed to him and then put in the file over at my office in that particular case. Finally, her lawyer began to go to the press with it and the press began to pick it up and it began to get so hot that finally, after almost 7 months, Evelyn Jordan was turned out of jail. It was a matter to me that if she wanted to be the town drunk and sleep on people's back porch, that was her right to do, as long as she was not guilty, and it was so abundantly clear that she was not guilty.

The next thing is the Mod Squad——

Senator HEFLIN. Now, before you leave that, do you recall whether or not Evelyn Jordan had a lawyer and there was a habeas corpus proceeding filed and a hearing held before Judge Robertson?

Mr. TRAVIS. Yes, sir, I remember there. I was not subpoenaed, but I remember it, yes.

Senator HEFLIN. You did not testify in that?

Mr. TRAVIS. No, sir.

Senator HEFLIN. Well, were you present at any of the hearings in regards to that habeas corpus proceeding?

Mr. TRAVIS. I was present at one hearing, not in connection with that hearing, but in connection with other cases that I had in court, and I just happened through the court room when that hearing was going on.

Senator HEFLIN. Well, do you know in regards to whether or not at the habeas corpus proceeding there was testimony given of substantially what you have told us, which would indicate that she was not guilty and that the other two women had confessed to it?

Mr. TRAVIS. What testimony was given to that, sir, is what her lawyer gave or in fact was what her lawyer gave, and the question—it seemed like the witness' name was Broadway, who they later threatened to indict for perjury, I do not know whether they did or not, and they questioned him. The officers who had developed the evidence and who had the evidence, and Dr Grubbs, the State toxicologist who had evaluated it and had done all of the lab work on it, were never called to any of these hearings, the bond hearing, the habeas corpus hearing, or anything else. I happened to be in court that morning when it was coming up, and Mr. Palughi was her attorney and I stepped in the courtroom and Mr. Palughi collared me and said it was coming up and asked me would I testify and I said if I am called to testify, I will, but I said, "Peter, I can't volunteer, because"——

Senator HEFLIN. So you did not testify?

Mr. TRAVIS. No, sir.

Senator HEFLIN. You were not called to testify?

Mr. TRAVIS. No, sir, I was not.

Senator HEFLIN. All right, sir. Later this case was nol prossed?

Mr. TRAVIS. Yes, it was, in January, I believe, of 1973.

Senator HEFLIN. Do you know whether or not they took an appeal on the habeas corpus case?

Mr. TRAVIS. Her attorney said that he was, but I do not know if he did or not. He was communicating with me, the press was communicating with me, and my sheriff, he was the kind that did not want to—and I do not blame him—to embarrass another elected official, and I was ordered on many occasions to keep a low profile, to do what I had to do as quietly and as pleasantly as I could, so I could not afford to publicly give statements to the press or to her attorney or to become involved in embarrassing another official. But I did try to work with him as much as I could to get the woman turned loose, because there just was no area of doubt that she was guilty.

Another thing, sir, I had two women in jail charged with murder that had been there for a few months that had never been indicted. I could not protect myself by throwing them out on the street and turning them loose, so I was—other than the moral point here, there was a point of personal liability.

Senator HEFLIN. Was Ms. Jordan in any way involved with the two women that were ultimately charged with the murder?

Mr. TRAVIS. No, sir, there could never be any link established, and the women who were involved in the murder, neither one of them knew her.

Senator HEFLIN. You mentioned press accounts. Were there newspaper articles that appeared in the paper about that time pertaining to this matter?

Mr. TRAVIS. Yes, sir, there were many of them over the period of time. I have copies of them here.

Senator HEFLIN. Do you have extra copies that could be submitted for the record?

Mr. TRAVIS. Yes, sir.

Senator HEFLIN. If you will submit those, then we will make them a part of the record.

Mr. TRAVIS. Yes, sir.

[The articles referred to follow:]

[From the Mobile Register, Nov. 10, 1971]

D.A. HOPES TO BLOCK QUASH REQUEST FOR EVELYN JORDAN

The district attorney Tuesday gave notice that he would attempt to block testimony at a scheduled 9:30 a.m. Wednesday Mobile Circuit Court hearing on a motion to quash the first-degree murder indictment against Evelyn Jordan, accused of the July 16 slaying of L. Quency Rhoten.

The D.A. filed a demurrer to the defense motion to quash, alleging that the material contained in the motion is "defensive" and properly heard by a jury at the trial—for example, conflicting testimony by various witnesses.

Wednesday's hearing is slated before Judge Hubert P. Robertson.

The Jordan woman, and a second defendant, Amanda Coleman, initially were sought by Mobile police after Rhoten, a Haliburton Oil Co. employee was found shot four times in the back of the head and lying beside his automobile in the 2000 block of Clement Street.

OTHERS CONFESS

Later developments turned up by the Mobile County Sheriff's Department in connection with the robbery investigation following the waylaying of a state narcotics agent brought forth confessions in the Rhoten slaying from two other women, Gloria Anglin and Margaret Perry.

Both of those women remain in county jail. Judge Herndon Wilson released Amanda Coleman at preliminary hearing in Mobile Municipal Court last Friday when the state conceded it had the wrong woman and moved for a nolle pross in the case. Thus, a hearing on a motion for habeas corpus in Circuit Court in the Coleman case was moot and the Friday hearing slated for Miss Jordan was put off until Wednesday.

The defense alleges in its motion to quash the indictment that the confessions of Anglin and Perry are valid and consistent with the physical evidence at the scene and that the indictment is based on prejured testimony by a state's witness who places Evelyn Jordan at the scene of the crime when the shots were fired.

PROMISES WITNESSES

The defense said Tuesday that it would produce witnesses who were with the state's witness when the shots were fired and who would testify that all of them were over a block away and that the witness could not have seen the crime.

The defense attorney said until he received notice of the D.A.'s intention to block the hearing of testimony he was under the impression that everyone concerned was interested in reaching the truth in the matter and freeing the Jordan woman, if she is innocent.

"Now, he (the D.A.) wants to play pleading," the defense attorney said. "We're supposed to be looking for the truth, not the pleadings," he said.

The D.A., however, said that the motion to quash failed to avert such facts as to make it "sufficient to justify the relief sought." He said he had reason to believe the Jordan woman was involved.

[From the Mobile Register, Nov. 24, 1971]

MISS JORDAN REMAINS IN JAIL AFTER JUDGE RESETS HEARING

Accused slayer of L. Quency Rhoten, Miss Evelyn Jordan, remained in Mobile County Jail Wednesday after Circuit Judge Hubert P. Robertson reset a hearing which might have cleared her for Nov. 19.

Robertson granted a motion by the district attorney to carry the case over on a demurrer to a defense motion to quash the indictment brought against the Jordan women in the July 16 death of Rhoten who was shot four times in the back of the head in the 2000 block of Clement Street.

Two other women have confessed to the crime but the D.A. contended that their confessions did not prove the defendant innocent even though they have both said she was not involved. An attorney for one of the women who confessed said Wednesday that she would retract her admission of guilt.

The attorney for Margaret Perry made this statement shortly after the D.A. had stipulated in open court that her fingerprint had been found on the left rear window of Rhoten's auto, placing her in the position from which Rhoten was shot.

The other woman who has given a statement implicating herself, Gloria Anglin, also remains in jail.

The defense protested the action of the court in delaying a hearing saying "a fraud has been committed on the grand jury and this court," referring to what he called the perjured testimony of the only state's witness other than an investigator who was in the grand jury which indicated Evelyn Jordon.

The D.A. contended that the statement of state's witness Virgil Broadway was a matter to be gone into at the trial of the accused woman.

Before the defense could present any arguments to those in the district attorney's presentation, Judge Robertson declared he was going to have to have legal briefs in the case and reset it for Nov. 19, causing the defense to shout, "Judge, I've got 30 or 40 witnesses and this defendant has been in jail since August. If this court cannot see justice done, I want a hearing on a motion for bond."

Miss Jordan has been held without bond since Aug. 27. The district attorney said at that time that if all the evidence were heard, this would still be a first degree murder case, but would probably not involve the death penalty for this woman, indicating he would not object to a bond being set.

[From the Mobile Register, Nov. 16, 1971]

Two Others Confessed—Plea Filed To Free Suspect In Murder

The attorney for Evelyn Jordan, accused of murder in the gunshot death of Laurel businessman L. Quency Rhoten in July, Monday filed a petition in Mobile Circuit Court for a hearing on a writ of habeas corpus charging she was being held in County Jail as a "political prisoner."

The petition claims that "the investigation of my case has been so mishandled by the Mobile City Police that I am being held to prevent these facts from becoming publically known.

"My case was under the supervision of Captain Don Riddle whom it is generally known to have been chosen to be the next Chief of Police . . . by City Commissioner Robert Doyle.

"Events that have occurred since my indictment can only lead me to believe that the District Attorney . . . is trying to prevent Commissioner Doyle and Captain Riddle from being embarrassed for having arrested the wrong person for the murder . . ."

The D.A. said the petition was "completely irresponsible on his (the defense attorney's) part. I am surprised. He not only cannot prove the allegations, they are obviously untrue."

Rhoten was slain in his car in the 2000 block of Clement Street. Police arrested Evelyn Jordan in late August on the testimony of state's witness Virgil Broadway. A second woman, Amanda Coleman was arrested in October but was freed at preliminary hearing in city court as more facts in the case broke.

Two other women, netted in a robbery investigation by the Mobile County Sheriff's Department, confessed to the slaying—confessions corroborated by evidence at the scene. They were Margaret Perry and Gloria Anglin and are both confined to the county jail.

In his petition for habeas corpus Evelyn Jordan states "the right thumbprint of Margaret Perry, one of those two persons who have confessed, matches a thumbprint taken from the rear window of the automobile of L. Quency Rhoten the night of the murder.

"The sheriff's department first made the Mobile Police Department aware of Margaret Perry's implication in this crime about October 1, 1971, yet the fingerprints of Margaret Perry were not compared to the prints found at the scene of the crime until the afternoon of Nov. 9."

The defense sought to quash the indictment against Miss Jordan last week but was blocked by the D.A. Judge Hubert P. Robertson set a hearing in the case for Friday, 9:30 a.m.

The D.A. contends that the confessions of the two women do not prove that Miss Jordan is innocent. He said there is evidence that she was involved. "This whole investigation was begun with a tip that there were more than two women involved," he said.

[From the Mobile Register, Nov. 24, 1971]

Evelyn Jordan Habeas Corpus Denied Despite Confessions

Judge Hubert P. Robertson Tuesday denied a writ of habeas corpus for Evelyn Jordan who is being held on a murder charge in connection with the July 16 shooting death of L. Quency Rhoten.

Miss Jordan was arrested by Mobile police, in late August and indicted for Rhoten's slaying in October, just as new evidence developed by the Mobile County Sheriff's Department turned up two women who later confessed to the killing.

Both women, Margaret Perry and Gloria Anglin, are being held in Mobile County Jail on robbery charges not related to the slaying. The defense based its move to free Miss Jordan on the facts that the other two women gave statements in which they implicated themselves and each other.

NO THIRD PARTY

While the statements did not contain a declaration that Miss Jordan was not involved, Deputy W. T. Travis who handled the sheriff's investigation testified that both women said there was no other party involved.

The confession of Miss Anglin was corroborated by her sister who testifed at the hearing. She said that both Miss Anglin and Miss Perry appeared at a club near the

Clement Street site of Rhoten's death and Miss Perry said she had shot a "white dude."

The sister, Mrs. William Tunstall of Bay Minette, said she walked back to the scene with the two who said they wanted to be certain the man was dead. Police, by then, had cordoned off the area.

Nelson E. Grubbs, state toxicologist, testified that he was called in by Travis to hear the statements of the women and he observed that in his opinion the statements could not have been made in such detail by the women unless they had been at the scene.

The defense called the state's main witness, Virgil Broadway, 17, who had given a statement to City Detectives Hubert Bell and Walter Pickett saying he had been walking near the scene, heard the shots and turned and looked. Moments after the shots he said he saw two women, one whom he identified as Evelyn Jordan, standing outside the auto in which Rhoten was slain.

CHANGES STORY

Broadway materially changed his story in the habeas corpus hearing and professed to no longer remembering many of the things he had previously said. He had declared Miss Jordan had on "psychedelic" colored slacks when giving a statement to police, but said on the stand Tuesday that it was the other woman at the scene who was dressed that way.

In arguing his case, and attempting to show that Broadway could not have seen what he said he saw, the defense noted that Broadway said he had a clear view, heard the shots and put both women outside the auto "which has to be untrue since the wounds were contact wounds and would not have been if he (Rhoten) had been shot from outside the auto."

Police witness Paul Beadnell, who investigated the scene, said that the shots which killed Rhoten were fired from a gun pressed to Rhoten's neck—consistent with Margaret Perry's statement that she shot him from the back seat of the car.

In addition Beadnell found Miss Perry's fingerprint on the inside left rear window of the auto, "We have here an obvious injustice," the defense said.

The District Attorney, however, argued that the confessions which implicated the other two women did not clear Miss Jordan and that Broadway's testimony was not inconsistent. He said that there were 33 discrepancies between the statements of the two women who have confessed.

STORIES MESHED WELL

Deputy Travis, however, in describing the statements said that each woman at first had attempted to minimize her own role and to play more heavily on the role of the other in the actual killing. But on major points surrounding the actual killing-robbery both stories meshed well.

Witnesses for Miss Jordan placed her with various persons that night, all within a five or six blocks radius of the crime scene, which the DA argued put her in a position to have committed the crime or to have participated in it. However, the statements of the two women who have confessed say they met Rhoten at the Flame Club and later drove into the area where Rhoten was slain.

Rhoten, a Laurel, Miss., employe of Haliburton Oil Co., whose auto he was driving, had been dating Miss Anglin for several weeks prior to the robbery and slaying.

The defense sought, following the hearing, to have formal murder warrants issued in General Sessions Court against Margaret Perry and Gloria Anglin. The lawyer said he would continue to take action—including an appeal of the habeas corpus ruling—to free his client.

A second woman sought in the killing by Mobile police was arrested about the time the confessions came to light.

Amanda Coleman was freed at preliminary hearing in Mobile Municipal Court when Broadway, under attack at the time by the defense which had charged in writing that his testimony was perjured, said at a lineup he could not identify her.

Broadway's own testimony boiled down to a claim that there were only two women at the crime scene. Other witnesses not called by the defense placed Broadway over a block from the slaying at the time the shots were fired, Sheriff's department sources said.

The defense, prior to Judge Robertson's ruling, said it felt that the judge would rule against Miss Jordan and decided against presenting more of its case at this time—in effect keeping the state from gaining access of the full defense position.

The state presented no rebuttal evidence to combat that which corroborated the statements of Misses Perry and Anglin, but Robertson ruled that Miss Jordan should not be freed and denied an oral motion to reduce bond from the present $7,500.

SET FOR ROBINSON—SUSPECT CHARGED IN INTIMIDATION OF DEATH DEFENDANT

A preliminary hearing on a charge of threatening a witness is set in Mobile General Sessions Court Friday for Anthony Robinson, 30, the boyfriend of one of two women who have confessed to the July 16 slaying of L. Quency Rhoten.

Robinson was arrested in the case after he visited Margaret Perry in the Mobile County jail and is alleged to have told her that word was out in the streets that she would be killed unless she retracted her statement in which she said that she and Gloria Anglin robbed and killed Rhoten.

Both Miss Anglin and Miss Perry were arrested in the slaying as the result of a side investigation spinning-off from a sheriff's probe into the robbery of a state narcotics agent here. The city police meanwhile had arrested Evelyn Jordan for Rhoten's murder and she had been indicted.

A second woman sought by city police, Amanda Coleman, was arrested after it came to light that the other two women had confessed in the crime. Her case was nolle prossed in Municipal Court, but Miss Jordan's case in still pending in Circuit Court.

Rhoden was found shot to death beside his auto near a park in Toulminville.

Numerous circuit court hearings to free Miss Jordan have failed. General Sessions Court Judge Paul Brunson has refused after consulting with the district attorney to issue murder warrants in the case against Misses Perry and Anglin.

The defense attorney has sought along with sheriff's deputies who worked the case, to have the warrants issued although both women are still being held in the county jail on robbery charges in another case.

He has said he links the refusal to arrest or indict the two for murder to moves by the district attorney and the city police to avoid embarrassment for having apprehended and indicted the wrong woman.

However, Detective Capt. Don Riddle said Friday that the case was still being investigated but "no new leads" have turned up.

Robinson's arrest by the Sheriff's Department marked yet another turn in the bizarre case in which Rhoten, a Mississippi businessman, was shot four times in the back of the head. It was the first actual arrest in the case for intimidation of a witness, but charges have been made that intimidations have occurred on several occasions.

[From the Mobile Register, Dec. 9, 1971]

MAN ARRESTED IN TREATENING JAILED WOMAN

County authorities are holding Anthony Robinson, 30, boyfriend of one of two women who have confessed to the slaying of L. Quency Rhoten last July 16, on charges of threats in an attempt to intimidate Margaret Perry.

Margaret Perry and Gloria Angline have both given statements on their involvement in Rhoten's death. Rhoten was found shot to death beside his car near a park in Toulminville. City Police arrested Evelyn Jordan and charged her with first degree murder in the case and sought another woman, Amanda Coleman in the case.

Meanwhile sheriff's deputies investigating the robbery of a state narcotics agent arrested Misses Perry and Anglin for the slaying of Rhoten.

Numerous Circuit Court hearings to free Miss Jordan have failed. The district attorney today said the grand jury which will return at 1 p.m. may or may not have indicted Misses Perry and Anglin that he could not say. Other sources said however that they would not be indicted for Rhoten's slaying.

Meanwhile Sheriff's Detective W. T. Travis has arrested Robinson who is alleged to have threatened Miss Perry in an attempt to intimidate her into repudiating her statement in which she said she was the one who fired the four shots which killed Rhoten.

Travis said he could not comment on the case right now. A preliminary hearing is set tomorrow in General Sessions Court for Robinson.

The D.A., however, said that Robinson is alleged to have visited Miss Perry in the County Jail and is said to have told her that there were "rumors" in the streets that she would be killed if she did not change her story. The D.A. said he did not see how someone telling a person that there were threats against her constituted a crime.

Senator **HEFLIN**. You were starting to go to another case. Go ahead.

Mr. **TRAVIS**. Well, Evelyn Jordan, I think that about covers it. There was the issue of the Mod Squad. We were all real proud when it was created, because we had never specialized in the sheriff's department. We put four men out there completely unsupervised. When I say men, young men, not a whole lot more than boys, and they began to go more and more wild.

Different people in the legal community and in the law enforcement community, they had the sheriff there over the years, they would try to talk to him but he would not see it. It was almost as if he thought they were the only ones he could depend on and everybody else was against him, so this just made them bold as brass. They kept getting worse and worse and worse.

I talked to Mr. Butler—well, the first time it came up, the two FBI agents in town at that time that worked good with the group of us, they about every 6 weeks would have a little dinner and would invite us all, the D.A. and his assistants and me and a couple of my detectives, and that sort of thing.

After the dinner we were having a toddy or two and Charlie Graddick and Bob Campbell, we were sort of by ourselves over in the corner and they said, "Travis, what are you going to do about the Mod Squad?" I said, "Well, fellows, I'm not having too much luck doing anything with it." I said, "That is your job as much as it is mine." They said, "Yeah, but you know how that is."

We talked on a little and they asked some questions about the sheriff, and I said, "No, it is nothing like that." I said the old man is so honest, it hurts, he just does not realize what has happened.

The next day or the next day—well, to step back about a month, Dr. Grubbs had called me down and he says, "Have you been able to get any sort of handle on this Mod Squad situation?" I said, "No, sir, Doc, I haven't," and I would talk to Doc about anything, and I told Doc I had talked to the sheriff. I said, "In fact, I've got myself in bad shape with the sheriff over it, but I can't get him to understand."

Senator **HEFLIN**. Sheriff who?

Mr. **TRAVIS**. Sheriff Bridges.

Senator **HEFLIN**. You were a deputy under the sheriff?

Mr. **TRAVIS**. Yes, sir, I was the chief investigator at that time. Now, the old gentleman, he was so honest it hurt, sir, and that is a fact. He just could not believe that this was going on. But Dr. Grubbs, he had tried to talk to him, and——

Senator **HEFLIN**. Who was Dr. Grubbs?

Mr. **TRAVIS**. Dr. Grubbs was the State toxicologist for years, years and years. He was sort of the senior fellow in Mobile in the legal and law enforcement community. I told Doc what the situation was and he said he had run into the same thing, and he said, "The thing that worries me is when it blows up," he said, "it is going to hurt the sheriff so bad and is going to hurt the reputation that you all have built up over the years." He said, "Have you checked the amount of drugs they are turning in against the amount of drugs that is actually being received?" I said, "Yes, sir, there are some bad discrepancies there."

You see, the rule was that you turned all the drug seized into Dr. Grubbs in toxicology. He analyzed them and give you an analysis of them, and generally they would accept his analysis in court, but if not he appeared in court. At such time as it was necessary to destroy, the court would issue an order and Dr. Grubbs would see to destroying it.

Dr. Grubbs and I started putting together reports of drugs and paraphernalia that the Mod Squad turned in. Dr. Grubbs kept it and I would put so many entries on a pad like this (indicating). When I got back over to my office, at times when there were not too many people around, I would pull these drug cases, one at a time, and we already had a case number and the defendant's name already and the amount and kind of drugs they turned in, and I carried it on across with the complaint number and the amount of drugs shown on the report as being seized, and I had three pages of this so far, three full pages, every line, I did not skip any lines, and I—well, Dr. Grubbs asked me had I talked to Randy, and I said, "Well, we spoke generally, but he don't seem to think there is anything there to be interested or whatever." He suggested that I go back to talk to him.

I went back to Mr. Butler and I told him, I said, "Mr. Butler, there are bad discrepancies between the amount of drugs turned in to toxicology and the amount of drugs being seized," and I said, "You know, it is the rule that we hand it all in to toxicology." He said yes, he was aware of that. And I said, "I've got three pages of it here worked up and I have got over 300 more toxicology sheets that I have got to run the record on." And he told me, he said, "Travis, you are not going to use me to embarrass the sheriff." And I told him, I said, "Randy, you ask any of the fellows that have been here a long time," I said, "that old man is like a daddy to me, but this is a problem that has got to be handled," and I suggested at that time that Randy go to him and say, "Look, sheriff, as the D.A., here is what I have got and I have got to go to a grand jury with it," and let him distance himself a little from the Mod Squad, and then if the grand jury, and with these numbers that I would supply him and that he could subpoena by name and complaint number the offense reports from the sheriff's office that would show the amount of drugs shown, then he could go back to the sheriff and say, "Sheriff, this is going to result in an indictment," then the sheriff could act appropriately and nobody would be hurt, I mean nobody would have embarrassed anybody else and the job would have been done, but he would not hear of it.

When I went back over to my office, I told my secretary, I said, "I've got some confidential typing I want you to do for me in the next day or two when there are not too many around," and she said, "Well, when you get ready, let me know." I kept this pad that had nothing but this drug information on it in a locked bottom drawer of my desk. I put it in a drawer and I locked it up and I went on about my other cases and supervising my other men.

The next morning—no, the second morning when I came in to work, when I walked around my desk, my bottom drawer was open just a crack and the tongue on the lock was sticking up. I immediately went in that drawer because that is where I kept everything confidential that I worked with, whether it be my case or whether it be something I was handling for the sheriff or for the courts or whatever.

I went in and I immediately saw that my pad was gone. I had an index in another drawer taped to the top of my desk and I got that index out and I went through everything in the drawer by the index. There was nothing else missing except my report of the discrepancies in the drug cases.

I did not say anything about it until 9 o'clock when I got a minute, I ran down to toxicology, which is in the lower level of the building, and I told Dr. Grubbs what had happened and I said, "I'm inclined to be quiet and listen," and Doc said, "I think that would be the best thing to do, you will probably learn more that way."

So I went back up to my office and when I went in the Mod Squad was bringing out half a washtub full of drugs and marijuana and that type thing out of the big old safe that they had in the chapel. I did not ask anything, I just watched it and they took it out to the car. I was not surprised, because I had two cars assigned to it and each one of them had a washtub full of drugs and marijuana and what have you in the back of it.

Then they come in and started pulling all the narcotics files and pulling the index cards, and I said, "Whoa, now, fellows, you are in my department now." They said, "Go talk to the sheriff about it if you don't like it, he told us to get all the narcotics files." They pulled all the narcotics files, they took them in the chapel, along with the index cards and put them in the safe.

Now, I never saw them after that. I do not know where they went. I did not have them available to finish going through the list, but I do know that the offense reports that shows the amount of drugs seized are still in existence. They are filed in a warehouse but they have not been destroyed, but due to the Privacy Act I could not get at these.

I do have the toxicology reports that shows the amount of drugs seized and the name of the defendants in the cases, if the committee is interested in a comparison.

Another thing that we had along at that time—well, one other thing, if I can step back a little. Here is a letter dated October 18, 1971, from Margaret Perry, telling about the murder that this Evelyn Jordan did commit. I took this to Mr. Butler and I showed it to him and I brought it back and I thought I put it in the file, but it turned up in the trunk of old stuff at the house when I was looking through for this that I have here.

Now, as to the Mod Squad, there was numerous press coverage and what have you, like that, but to show you sort of overall what I am talking about, they had 270 cases in general sessions court, and 54 of them were thrown out, 33 were appealed, 17 waived to the grand jury, 44 bound over, 5 demanded jury trials, 74 were nol prossed before trial, 43 were discharged on trial. The final conviction was 21 cases. Now, this is records backed up by complaint numbers and cases numbers in Mobile County Court, the officer's number, the charge, the judge that handled the case, the officers that handled the case and the disposition.

This is the thing that are some of the things that made the Mod Squad impossible to ignore, and this is the type of stuff that was submitted to Mr. Butler.

Now, I realize his position of not wanting to embarrass the sheriff, but this got to the point that something had to be done, even if somebody had to get embarrassed.

The last thing was Richard White was the first black that our department hired. He was a very well educated man, an intelligent man. He was a conservative dresser and was making a great detective.

It seemed that we had a rash of black cases right at that time due to the drugs, because at that time the drugs at the wholesale level were mostly controlled by the blacks through Beasley, and we began to go through them like Sherman went through Georgia when Richard came to work for me.

Mr. Butler was critical of the number of black cases that we were making and blamed Richard for it and wanted to know if it was Richard making all of these black cases for Richard or for White's benefit. I told him no, we were making the cases as they come to us.

Senator HEFLIN. Now, who is Richard?

Mr. TRAVIS. Richard White, he was my black deputy that I was using as a detective. He was the first one we ever hired. I wanted to see him go forward, because we needed him. There were areas they could work in that we could not. It was time for it. It was the law of the land, so let us get on with it. And Richard was a friend to every man that he worked for. He just was a grand fellow and was an able officer.

I was also criticized in this respect for letting Richard White testify in cases that I should have testified in. I did that because I knew back at that time that I was going to be chief investigator shortly and would be completely out of the field, and Richard did not need any help on the investigation, his report writing, his case preparation. The only polish he needed was on his testifying, presenting his cases in court, and I was trying to give him that.

He worked out real good, he really built a name for himself before he died.

Senator HEFLIN. Let me ask you, after you told Mr. Butler about the evidence you had against the Mod Squad, did Mr. Butler's assistant, Mr. Charles Graddick, ever contact you to review that evidence?

Mr. TRAVIS. No, sir. I talked to Charlie Graddick and Bob Campbell both on several occasions. We were real good friends. We would have a toddy after work and that kind of thing, and I thought maybe they might push Randy a little since they were his associates and would get him to move on it. They knew what I had almost daily or at least every other day. They were real nice fellows, you could talk to them, and I knew they would tell him, you know, going back and telling Randy these things.

Senator HEFLIN. To your knowledge, was there ever an investigation of the two police officers and the elected official alleged by Barbara Wright to be involved with drug trafficking?

Mr. TRAVIS. No, sir. Those two officers stayed there. One of them is now retired and the other one the Federal people finally got him about 10 months ago. He was hooked up with Sam Drain, one of our biggest drug people in Mobile in a drug deal.

Senator **Heflin**. Mr. Short, do you want to submit some questions?

Mr. **Short**. Yes, sir.

Senator **Heflin**. They will submit some questions in writing to you. Thank you, Mr. Travis.

Mr. **Travis**. Yes, sir.

Senator **Heflin**. That will conclude your testimony.

Mr. Butler, would you like to return to the stand?

Mr. **Butler**. Yes, sir.

Senator **Heflin**. We will excuse you now, Mr. Travis. All of your records that you want to offer will be admitted in testimony and if you will give them to one of the clerks, we will receive those records.

Mr. **Travis**. Yes, sir.

[The aforementioned material follows:]

10-12-11

Detective: Travis

They have a lady up here for Murder, but she had nothing to do with it. She wasn't nowhere around when the incident took place.

The persons who committed the crime is on the outside. I was there when it happened But I was scared to say anything about it. My conscious was bothering me. I can't stand to see someone punished for something they didn't do.

Evelyn Jordan is innocent. I will tell you everything I know. I don't want to be involved in the trial when it come up.

The murdered victim was a white man. He was shot four times in the back of the head with a .22 caliber pistol. The witness that is testifying against Miss Jordan maybe involved in the incident, but I can't be positive unless I see him..

The reason I want to keep my identity a secret, is because I value my life. You will understand, I'm sure.

Margaret
Perry

AT 8 P.M. ON I RECIEVED A PHONE CALL FROM DEPUTY SHERIFF, LARRY TILLMAN. TILLMAN WAS CALLING FROM HIS HOME. HE INDICATED THAT HE WANTED TO TALK TO ME, AND ASKED ME TO COME RIGHT OVER TO HIS HOME. I WENT IMMEDIATELY TO TILLMANS HOME. WHEN I ARRIVED, I WAS GREETED AT THE DOOR BY RONNIE RUTHERFORD, A FRIEND AND BUSINESS PARTNER OF TILLMANS. ALSO PRESENT WERE ALICE RUTHERFORD, WIFE OF RONNIE,. AND LARRY TILLMAN. TILLMANS WIFE BETTY WAS IN THE HOSPITAL HAVING MAJOR SURGERY.

THE FIRST THING TILLMAN SAID TO ME WAS " JUST WHAT THE HELL IS GOING ON AT THE OFFICE". TILLMAN WAS REFERRING TO [illegible]REMOVAL,FROM THE MOD SQUAD. TILLMAN SAID HE HAD RECIEVED AT LEAST 15 PHONE CALLS FROM FRIENDS AND ALL SAID THAT HE (TILLMAN) HAD BEEN REPLACED ON THE MOD SQUAD BY DEPUTY ROY PRICE. TILLMAN SAID THAT THE OTHER THREE MEMBERS OF THE MOD SQUAD HAD BEEN "OUT TO GET HIM" FOR A LONG TIME. TILLMAN WAS VERY UPSET THAT THE SHERIFF HAD NOT CALLED HIM ABOUT THE INCIDENT. TILLMAN SAID HE THAUGHT IT WAS PRETTY LOW OF THE SHERIFF TO DO SUCH A THING WHILE HIS WIFE WAS IN THE HOSPITAL AND HE WAS AWAY FROM THE OFFICE.

WE TALKED ABOUT THE SITUATION FOR ABOUT TWO HOURS. IN THAT TIME, IT WAS EVIDENT TO ME THAT LARRY TILLMAN WAS VERY MAD AND UPSET ABOUT THE CHANGE IN HIS STATUS WITH THE MOD SQUAD. HIS MAIN FEAR WAS THAT HE WAS GOING TO BE REMOVED FROM THE SHERIFFS' DEPARTMENT ALL TOGETHER.

[illegible]

I ASKED TILLMAN WHY RANDY BRIDGES,. DAVID BECK AND PETER PATRONAS WERE OUT TO GET HIM. TILLMAN SAID THAT THEY WANTED TO GET RID OF HIM BECAUSE HE DID NOT AGREE WITH THE WAY THEY OPERATED. AFTER TALKING ABOUT THIS FOR A WHILE I SUGGESTED THAT LARRY DO AN INTERVIEW WITH ME ON SOUND FILM,. HE SAID HE WOULD HAVE TO THINK ABOUT IT FOR A WHILE. I TOLD HIM I HAD TO LEAVE FOR A WHILE TO SHOOT SOME FILM AT THE DOG TRACK, AND I WOULD RETURN LATER THAT NIGHT.

2 of 3

FT THE TILLMAN RESIDENCE AND RETURNED IN TWO HOURS. WHEN I ARRIVED, TILLMAN S TALKING ON THE PHONE TO DAVID BECK ABOUT THE SITUATION. TILLMAN TOLD DAVID BECK THAT HE WAS GOING TO MAKE A FILM EXPOSING EVERYTHING. AT ONE O:CLOCK THE NEX MORNING TILLMAN DECIDED TO DO A FILMED INTERVIEW. I CALLED DON DIEKLE AND MADE HIM AWARE OF THE SITUATION AND ASKED HIM TO BRING CAMERA, LIGHTS AND FILM TO DO THE INTERVIEW. HE AGREED AND ARRIVED ABOUT 2 AM. THE FOLLOWING ACCUSEATIONS WERE MADE BY LARRY TILLMAN:

1. ALL FOUR MEMBERS OF THE MOD SQUAD HAVE STOLEN ITEMS FROM HOMES DURING DRUG RAIDS,..INCLUDING STEREO COMPONENTS, RADIOS AND OTHER ITEMS WHILE OCCUPANTS WERE NOT AT HOME. ON ONE OCCAISION MENTIONED BY TILLMAN,..SOME STOLEN STEREO COMPONENTS WERE TAKEN TO DEPUTY ROY PRICE RESIDENCE TO HIDE.
2. DRUGS THAT ARE CONFISCATED IN RAIDS ARE SUPPOSED TO BE TURNED IN AS EVIDENCE. IN MANY CASES DRUGS HAVE BEEN KEPT BY THE MOD SQUAD. ONLY A PORTION WERE TURNED IN TO DR. GRUBBS. CHECK WARRENTS IN SHERIFFS' OFFICE AGAINST RECIEPTS FROM DR. GRUBBS.
3. ON ONE OCCASION A CAPSUL CONTAINING HEROIN WAS GIVEN TO AN INFORMANT AND THE INFORMANT COOKED THE HEROIN,.AND SHOT IT INTO HIS VEINS. THIS TOOK PLACE IN GEORGE CALIHANS OFFICE IN THE BASEMENT OF THE COURT HOUSE. THOSE PRESENT WERE GEORGE CALIHAN,.DAVID BECK,.RANDY BRIDGES,. PETE PATRONAS,.LARRY TILLMAN SAID HE DID NOT GO ALONG WITH IT AT ALL AND HE WALKED OUT. TILLMAN SAID THAT IS ONE OF THE REASONS THE OTHER THREE WANTED TO GET RID OF HIM.PETE PATRONAS CARRIES 2 CAPS OF "H" IN HIS FLASHLI
4. THE MAJORITY OF ALL WARRENTS OBTAINED BY THE MOD SQUAD ARE OBTAINED BY LYING TO THE JUDGES ABOUT POSITIVE KNOWLEDGE OF DRUGS ON THE PREMISES.
5. TILLMAN SAID MONEY HAS BEEN STOLEN FROM HOMES WHILE SEARCHING FOR DRUGS. WHEN COMPLAINTS CAME INTO THE SHERIFF,. HE WOULD PROTECT THE MOD SQUAD.

MAN SAID THERE WERE W[illegible]S THAT THE OTHER THREE MA[illegible] MONEY. HE SAID "CAN'T YOU TELL,. LOOK AT WHAT THEY HAVE,. AND LOOK AT WHAT I HAVE." WEAPONS THAT ARE CONFISCATED DURING RAIDS,.. SEARCHING OF CARS, ETC. HAVE BEEN KEPT BY BRIDGES,. BECK,. AND PATRONAS. HE SAID "JUST HAVE THEIR HOMES SEARCHED AND YOU'LL SEE WHAT I MEAN".

8. ON MANY OCCASIONS, THE MOD SQUAD WILL TAKE SOME DRUGS ALONG ON RAIDS AND WILL USE THEM TO PLANT JUST IN CASE THEY CAN'T FIND ANY DURING A SEARCH. TILLMAN TALKED OF ONE CASE WHERE HE SAID MARIJUANA WAS PLANTED TO MAKE A CASE."A LID OF MARIJUANA WAS FOUND IN A BOOT IN A CLOSET,.. THAT WAS AFTER I HAD SEARCHED THE ENTIRE ROOM,.CLOSET,. AND BOOTS,. AND FOUND NOTHING. "DAVID BECK FOUND THE LID,..HE PLANTED IT."
9. TILLMAN SAID THE REASON DRUGS ARE HELD BACK BY THE SQUAD IS TO HAVE A SUPPLY ON HAND TO USE FOR PLANTS,.. AND TO PROVIDE INFORMANTS WITH DRUGS TO SELL AND TO USE THEMSELVES.

Jim Hughes

JIM HUGHES

CHARGES OF MOD SQUAD WRONGDOING SENT TO DA

(By David Spear)

Allegations of possible wrongdoing by members of the Mobile County Sheriff's Department's elite Mod Squad narcotics unit were forwarded by the Mobile County Commission Friday to county District Attorney Charles R. Butler.

Copies of the charges were also sent to Sheriff Ray D. Bridges and Alabama Attorney General William J. Baxley for possible action by their offices.

The charges were presented to the commission earlier this week and officials said Friday that the county lacks jurisdiction in the matter.

Commission President Howard Yeager said that while the commission itself could not act on the charges, they were a "matter of concern to the entire community, and the commission, of course, is concerned about matters that occur in the county."

Sheriff's Deputy Larry Tillman was said to have given an official statement to Butler Friday and the district attorney reiterated his statements of Thursday in saying that there would be a full investigation.

Yeager said copies of the allegations are available to the public through his office.

Tillman told The Mobile Register Friday, "We knew some powerful people wanted to get us but we didn't think it would be like this.

Mod Squad member David Beck "welcomed the investigation" and said he was willing to submit to a lie detector test.

Deputy Pete Patronas said "I hope the people will realize the good we do."

Bridges was unavailable for comment.

[From the Mobile Register, Feb. 2, 1975]

DEPUTY SHERIFF PETE PATRONAS IS DISCHARGED

(By Rusty Rein)

Sheriff Tom Purvis discharged a former narcotics officer from his duties as deputy sheriff Thursday and the officer's attorney said he will appeal the action to the Mobile County Personnel Board.

In a letter delivered to Pete Patronas by deputies, Purvis said he was dismissing the officer from his duties because he had "been convicted of a felony and I feel that I cannot commission you to carry a firearm in violation of the law of the State of Alabama."

According to Mobile County Circuit Court Records, Patronas was convicted of assault with intent to rob and on March 14, 1946, received a two-year suspended prison sentence. The conviction was set aside and dismissed on April 25, 1970, by Judge Elwood Hogan with the consent of the District Attorney's Office.

Patronas' attorney disputed Purvis' grounds for dismissal. "The conviction was apparently totally set aside and dismissed in 1970 and is no longer in effect," the attorney said.

Patronas has been employed with the Mobile County Sheriff's Department since 1965 as a laborer and process server but has performed the duties of a deputy sheriff during that time. He worked for the state prior to that time as an enforcement officer on Dauphin Island.

Patronas was a member of the Sheriff's Narcotics Unit (popularly known as the Mod Squad) under Sheriff Ray D. Bridges. Patronas has been on sick leave since Purvis took office Jan. 20 after the deputy apparently suffered a heart attack.

The deputy was the subject of a controversy soon after Purvis took office after Patronas said the sheriff and Chief Deputy Charles Wimberly attempted to force him to resign.

On Jan. 24, Purvis told The Mobile Register he was indefinitely suspending Patronas for being absent without permission but the sheriff failed to follow through with his statement after the officer's attorney produced physician's certificates.

[From the Mobile Register, Jan. 18, 1974]

INVESTIGATION OF MOD SQUAD SLATED BY DA

(By David Spear)

Mobile County District Attorney Charles R. "Randy" Butler said Thursday his office will conduct an investigation of alleged irregularities within the Mobile County Sheriff's Department's "Mod Squad."

In addition, the Mobile County Commission will discuss the matter at a special meeting at 10 a.m. Friday. Sources told The Mobile Register the commission is expected to give Butler information it has received concerning the allegations.

The Mod Squad, a special contingent of four Sheriff's deputies, has specialized since its inception in narcotics investigations.

Sheriff's deputy Larry Tillman was seen in Butler's office Thursday afternoon and sources said he would make an official statement to Butler Friday morning.

The County Commission has received certain allegations involving members of the Mod Squad but county officials say the matter is not within their jurisdiction. Commissioner Coy Smith noted Thursday that Friday's special meeting of the commission was not called specifically for the purpose of discussing the matter. Rather, he said, the matter is one of many on the agenda.

In a related development Thursday, Mobile businessman George Lods called a press conference to urge that an "independent investigation of the allegations be made."

[From the Mobile Register, July 4, 1974]

ABUSING FUNDS, FAVORITISM CHARGED TO SHERIFF BRIDGES

Mobile County Sheriff, Ray D. Bridges was accused Wednesday of mismanagement of department funds to the benefit of a "chosen few" officers.

The charge was made by Mobile County Law Enforcement Association president John Price and a delegation of sheriff's deputies meeting with the Mobile County Commission to discuss the commission's rejection of hazardous duty pay for sheriff's personnel.

Deputies, along with all other county employes, received $50-per-month pay raises two weeks ago but the commission vetoed a Mobile County Personnel Board decree calling for an additional $50-per-month in hazardous duty pay for deputies.

County, officials said Wednesday that the best way in which the deputies could receive the equivalent to the hazardous pay was if the county could eliminate overtime pay for deputies and have the officers adjust the base pay through the personnel board.

Bridges controls the overtime disbursement and deputies said only certain officers are allowed to work overtime.

"It has been abused by the sheriff himself and a chosen few men over there have reaped the benefits," said Price, himself a City of Mobile police officer.

Reiterating his charge, Price said, "The sheriff has used overtime money to fill the nests of a few chosen people out there . . ." In an apparent reference to the sheriff's narcotics unit, the Mod Squad.

Com. Coy Smith pointed to statistics compiled for the six years he and Com. Howard Yeager have been in office and noted that the "average increase in pay for deputies has been about 40 percent," including overtime pay.

Price and the deputies argued however that only a few officers have been allowed in work overtime and thus increase their pay.

"The big increases are to the Mod Squad and we've been opposed to it since it was first started," Price said.

Smith's statistics indicated that the four members of the Mod Squad last year received several times more overtime pay than other officers.

David Beck, still a squad member, received more than $4,000 in overtime pay as did fellow squad member Peter Patronas.

Former Mod Squad members Larry Tillman and Randy Bridges received more than $3,000 in overtime pay last year.

Combined 1973 salaries for the four were more than $11,000 each, making each of them among the five highest-paid officers in the department, according to Smith's compilations.

Commission officials, noted that the sheriff controlled the overtime however and said there was little the county could do to increase deputies pay unless the average $80,000-a-year overtime pay to the department could be eliminated or controlled.

Smith said the three commissioners met with the sheriff recently and offered to approve the hazardous duty pay if the overtime pay were eliminated.

The sheriff refused, according to Smith.

Wednesday's meeting became quite heated and on several occasions was reduced to a shouting match.

"Our road and bridge crew has more people hurt than the sheriff's department," Smith remarked at one point. "It's a more dangerous job."

Both sides remained adament at the meeting's conclusion, Smith and Yeager vowing to block hazardous pay until the overtime pay is controlled and Price asserting the deputies "aren't done yet."

Senator HEFLIN. Mr. Butler, if you would take a seat, I would like to give you an opportunity to reply in any way that you would like to Mr. Travis' remarks.

Mr. BUTLER. I am not sure what the nature of this last allegation regarding Richard White was, but I want the committee to know that part of the success of my office when I first took office was the ability to immediately have a working relationship with the black police officers who were at that time on the Mobile Police Department.

There were not many, as Mr. Travis has pointed out, on the sheriff's department, and Richard White was indeed a good officer.

Noble Beasley was a famous criminal in Mobile because he had allegedly committed a murder in 1969 for which he was indicted and acquitted by my predecessor. The minute I took office, the first thing I did was prepare the case against the co-defendant, and to do that I had to work in the field with two black officers who were able to help me and I helped them gain the conviction of the co-defendant because of the willingness of those officers to step forward and get reluctant witnesses to come forward who had not testified against Mr. Beasley.

So, if the suggestion is not a close working relationship or some reason——

Senator HEFLIN. I gathered basically what Mr. Travis was stating is that you had reluctance to use Mr. White as a witness to testify in cases.

Mr. BUTLER. That is not correct, Senator.

On the Mod Squad allegation, I would suggest that if the degree of specificity to which Mr. Travis has alluded about not only his knowledge of and the possible continued existence of these records, that 17 years have elapsed and those records apparently have never been presented to the two other district attorneys that have served Mobile County since my tenure, the three U.S. attorneys, nor to the attorney generals of the State of Alabama who have supervisory power over all district attorneys. It is an easy matter for a law enforcement officer to say to the attorney general, we have a D.A. not doing his job down in Mobile or Dothan or wherever, and the attorney general will exercise that supervisory power, and that was never done in this case.

As to the Evelyn Jordan matter, going in reverse order, I believe I was hearing something that maybe was not completely coming out before the committee, but Evelyn Jordan was represented in her habeas corpus hearing by a criminal defense lawyer who practices nothing but or practically nothing but, and if I understood Mr. Travis, Mr. Travis says that he would not volunteer to testify for Evelyn Jordan, yet he gave this committee the impression that he was extremely concerned and sensitive about the fact that Evelyn Jordan was wrongfully being held in jail. It would have been an easy matter for him to either insist that he testify in that case or volunteer to testify to bring this to light.

Again, my recollection, Senator, is somewhat dim, but I would remind Your Honor, former Judge, that the mere fact that there exculpatory statements or confessions from somebody does not necessarily exonerate a third party, and it may have been that I initially viewed the law and those statements with a jaundiced eye. Ultimately, my action and no one else's, released that woman from jail. Now, I do not know what these press stories say, but I assume they reported what took place at the time, but I have not seen those.

Finally, the Barbara Wright matter, again I would ask this committee to consider that Doyle Coats' letter, which is now an exhibit I have offered, takes a substantially different position than Mr. Travis has offered today, and that if he and the sheriff's department were involved in this major effort that I have testified to earlier, there is no reason in the world why this information could not have been presented to the U.S. attorney, the IRS, the Justice Department and this task force and some other agency taking action on it. That was not done.

Senator HEFLIN. Thank you, sir. Any of the records and the newspaper accounts that Mr. Travis has introduced, they should be made available to Mr. Butler prior to his answering any written questions that may be submitted pertaining to these matters.

I have to go to another meeting. I realize that we have got Mr. Forester, but I will try and get back and have it as soon as we can. If Mr. Forester can—I did not know originally I was going to have to chair the hearing, but I will try to get back, but it is going to be approximately 3:00 o'clock before I can get back. I hate the inconvenience, but I will try to get back as soon as I can.

[Short recess.]

[Response to questions follow:]

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1869-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1891-1982)

CABLE ADDRESS: HAMILTONS

TELEX: 782007

TELECOPIER (205) 432-4276

June 30, 1988

FEDERAL EXPRESS

The Committee on the Judiciary
United States Senate
SD-212
Washington, D. C. 20510

Attn: Honorable Patrick J. Leahy

Re: Charles R. Butler, Jr.
Nomination

Dear Senator Leahy:

At my testimony before the Senate Judiciary Committee yesterday, when I was asked by Senator Heflin to rebut the statements made by William Travis, I intended to fully rebut every charge which was false. I was, however, confronted by William Travis for the first time that I had ever heard it, of the suggestion that I was somehow insensitive to the utilization of Richard White, a black deputy sheriff, as a witness in the Courtroom. After fully refuting that charge in my testimony, by oversight only, I failed to refute the allegation that Travis made that I made a remark in the Evelyn Jordan matter that she was just a poor black woman and if she stayed in jail, probably nobody would miss her, or words to that effect.

I totally and unqualifiedly deny that I ever made such a statement about Evelyn Jordan or any other person incarcerated in the Mobile County Jail.

I consider this letter as part of my testimony and offer it as supplemental testimony as though I were still under oath before your Committee. I have had a notary public attest my statements hereinabove.

Very truly yours,

CHARLES R. BUTLER, JR.

STATE OF ALABAMA)

COUNTY OF MOBILE)

Personally appeared before me, the undersigned authority, Charles R. Butler, Jr., who by me being first duly sworn on oath deposes and says that he has read the contents of the above letter which are submitted as supplemental testimony to his testimony before the Committee on the Judiciary in Washington, D. C. on Wednesday, June 29, 1988, and that the matters contained therein are true and correct.

CHARLES R. BUTLER, JR.

Subscribed and sworn to

before me on this the 30th

day of June, 1988.

Emily J. Duke
NOTARY PUBLIC, Alabama State at Large
My Commission Expires: 9/8/91

(AFFIX NOTARIAL SEAL)

CRB:ejd
cc: Senator Strom Thurmond
Attn: Duke Short
SD-148
Washington, D. C. 20510

Senator Howell Heflin
Attn: Stephen Raby
SH-728
Washington, D.C. 20510

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1826-1888)
THOMAS A. HAMILTON (1844-1887)
J. GAILLARD HAMILTON (1899-1956)
THOMAS A. HAMILTON (1928-1962)
CHARLES R. BUTLER (1951-1962)

CABLE ADDRESS: HAMILTONS

TELEX: 782007

TELECOPIER (205) 432-4276

June 30, 1988

FEDERAL EXPRESS

The Committee on the Judiciary
United States Senate
SD-212
Washington, D. C. 20510

Attn: Honorable Patrick J. Leahy

Re: Charles R. Butler, Jr.
Nomination

Dear Senator Leahy:

I am enclosing an affidavit that I have obtained from the former Sheriff of Mobile, Ray D. Bridges, about the veracity of the witness, William Travis. I would appreciate it if this affidavit could be offered and made a part of the testimony in my hearing.

Very truly yours,

Charles R. Butler, Jr.

CRB:ejd
Enclosure
cc: Senator Strom Thurmond
Attn: Duke Short
SD-148
Washington, D. C. 20510

Senator Howell Heflin
Attn: Stephen Raby
SH-728
Washington, D.C. 20510

STATE OF ALABAMA)
COUNTY OF MOBILE)

Personally appeared before me the undersigned authority Ray D. Bridges who by me having been first duly sworn on oath deposes and says as follows:

My name is Ray D. Bridges of Mobile, Alabama. I served as sheriff of Mobile County from 1954 until 1974 and during that period of time employed William Travis for approximately seven or eight of those years. I terminated Mr. Travis' employment in 1973 as a result of a culmination of a number of problems involving his performance of his duties and his credibility. I have not yet had an opportunity to read the transcript of Mr. Travis' testimony before the Senate Judiciary Committee given in connection with the nomination of Charles R. Butler, Jr. to the Federal Bench in Mobile, and will therefore refrain from making any specific comment about any of Mr. Travis' testimony until I have an opportunity to read that transcript. I do know, however, that after having worked with Mr. Travis for a number of years and having observed the manner in which he worked and knowing his general reputation in the community, he cannot be believed under oath.

Ray D. Bridges
RAY D. BRIDGES

Sworn to and subscribed before me on this
the 30th day of June, 1988.

NOTARY PUBLIC, STATE AT LARGE, ALABAMA
My Commission Expires: 3/11/92

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1931-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

July 7, 1988

Senator Strom Thurmond
Attn: Duke Short
SD-148
Washington D.C. 20510

Dear Duke:

Enclosed please find my answers to the questions submitted by Senator Thurmond. I have sent a copy of these to Cary Weil in the Justice Department and would appreciate your seeing that they are properly presented to the full committee.

With highest regards, I remain

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
Enclosure

cc: Ms. Cary Weil

QUESTIONS FOR CHARLES R. BUTLER, JR. OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ALABAMA

1. MR. BUTLER, ARE THERE EVER ANY CIRCUMSTANCES UNDER WHICH A JUDGE SHOULD ATTEMPT TO ESTABLISH NEW JUDICIAL PRECEDENT, AND IF SO, WHAT CRITERIA WOULD YOU CONSIDER IN ORDER TO DETERMINE THE PROPRIETY OF REVERSING EXISTING PRECEDENT?

As a potential Federal District Judge, I view my role as a trier of the facts with an obligation to apply existing precedent to those facts. In my judgment there would be extremely limited circumstances under which a Federal District Judge would attempt to establish new judicial precedent.

2. MR. BUTLER, DO YOU BELIEVE THAT CHANGES IN LAW SHOULD BE RESERVED TO THE LEGISLATURE WHOSE MEMBERS CAN BE ALTERED BY THE VOTERS IF THE ELECTED OFFICIALS FAIL TO REFLECT THE VALUES OF SOCIETY?

Yes. The separation of powers inherent in our form of government requires that the legislature be the body who responds to changing values in society by changes in the law. Even if at some point a public poll might show that society's values are not adequately reflected by existing legislation, the proper forum for those values to be weighed, and law to be made to reflect those values, is the legislature, and not the courts.

STATE OF ALABAMA)
COUNTY OF MOBILE)

Before me, the undersigned authority, personally appeared Charles R. Butler, Jr., who by me first duly sworn, on oath deposes and says that he has read the above questions and answers submitted in connection with his hearing before the United States Senate Committee on the Judiciary and that the answers given are true and correct.

CHARLES R. BUTLER, JR.

Subscribed and sworn to before me on
this the 7th day of July, 1988.

Ann English Nielsen
NOTARY PUBLIC, ALABAMA, STATE AT LARGE
My commission expires: 10-1-90

JOHN COLEMAN
ATTORNEY AT LAW
801 VAN ANTWERP BUILDING
MOBILE, ALABAMA 36602
OFFICE 433-6544

July 26, 1988

Andrew Rainer, Esq.
U. S. Senate Judiciary Committee
224 Driksen Senate Office Building
Washington, D. C. 20510

Re: Charles R. Butler Nomination

Dear Mr. Rainer:

I answer the questions set out in your letter of July 7, 1988 at this late date because I have been on vacation.

Regardless of what efforts are made to attack the veracity of Deputy Travis the testimony given by him is correct. I was at the initial meeting held in the office of Mr. Butler in the Mobile County Courthouse. The people present included Deputy Travis, State Investigator George McKee, Barbara (Big Barbara) Wright, and myself. At this meeting she offered to "wear a wire" so that her conversations could be taped. This was to be done as she gathered evidence against two police officers and "the man across the street." Across the street could have only referred to City Hall or the Police Building which are in one direction. The only other building across the street could only have referred to Christ Episcopal Church, which in my mind at least, was not the direction to which Ms. Wright referred.

My impression was, and still remains, that she was offering to implicate someone in the City Govern~~ment or~~ a high ranking member of the Police Department. I instructed Ms. Wright in the presence of Mr. Butler to never tell me the name of the person involved. I did this in order that I would not be implicated if the person being investigated was some how tipped off. Mr. Butler's reaction to this offer was to decline to accept her assistance because it might have interfered with an ongoing federal investigation. This reason was given at a later date and was not mentioned at the time of the initial meeting.

My reaction to his denial to use her assistance was one of astonishment. I thought then, and still think, that Mr. Butler was trying to protect someone in the Police Department or in City Government. My second opinion, if the first one was incorrect was that he was totally incompetent.

My suspicions concerning my first impression were some what substantiated by the fact that the two police officers named by my client were transferred from the Crime Investigation Division but were not terminated.

To this day I cannot conceive of anyway that the use of my client, as a cooperating individual in an investigation into corruption in the Police Department and/or City Government could have interferred with an ongoing federal investigation of Noble Beasley.

It is my understanding that Mr. Butler has received substantiation to his claim from a ex-IRS agent named Doyle L. Coats. I would think that the record of Mr. Coats speaks for itself. I would not believe anything that Mr. Coats told me whether under oath or otherwise.

If I can be of further assistance to you please advise.

Sincerely,

JOHN COLEMAN

JC/ms

July 15, 1988

U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Attention Andrew Reiner:

Dear Sir;

In response to your letter and questions conserning the proposed nomination of Charles R. "Randy" Butler to A Judjeship in the United States District Court, I submit the following.

My name is George L. Mckee, and my position at the time in question was a merit system Narcotics Agent II in and for the State Of Alabama, acting Chief of the Narcotics Division for the State Of Alabama. My duties were, Information, Education and Enforcement. In the Information and Education phase I lectured to Conventions,Seminars Church and Civic groups as well as schools and Colleges. The enforcement phase was a dedicated effort of assisting law enforcement agencies from the Tennessee border to the Gulf Of Mexico in surveillance, under cover work, buying drugs and narcotics, making arrests and assisting in prosecuting drug dealers and manufacturers. These duties also consisted of drafting new legislative bills to be enacted and ammending existing laws ineffect and testifying before various committies.

As to the meeting you referred to in paragraph two, I was present. I was the injured party in the robbery that "Big Barbara" had been indicted for and was about to be tried for. I was the principal witness for the State Of Alabama. Barbara Wright, through her Attourney John Coleman, did offer to wear a wire and to attempt to give us Noble Beasley, two City Police Officers and "THE MAN" in the Court House, implying, an elected public official. The Deal was that she would wear a wire or cut me or another agent in on the action and PLEAD GUILTY TO THE ROBBERY COUNT AND TAKE 10 "TEN" YEARS. The reaction of Mr. Butler was one of absolute rejection. He would not even discuss the possibility and gave absolutely no reason for his action or lack of action in this matter. He stunned the enforcement branches by not considering this plea.

The only reason Mr. Butler gave for not considering the plea was that he did not trust "Big Barbara". I was the agent who was robbed and knocked in the head with a shotgun barrel and I did not trust her either, but, we had nothing on the people she was willing to deliver at the time and my experience has been that you take assistance when you can get it and from almost any source. Mr. Butler never once mentioned an ongoing Federal Investigation, which brings me to the letter by Doyle L. Coats.

Inpagagraph one, Mr Coats states that he was sent to Mobile to work on the "Narcotics Trafficking Project", (NTP) in effect at the time. As the acting Chief of the Alabama Narcotics Division, I had never heard of the(NTP), and my office was in almost daily contact with the BNDD, later changed to the DEA, we worked jointly on almost every case originating in Alabama, and Agent AdAmsky and later Agent Williams never mentioned the(NTP). The Mobile County Sheriff and the Mobile City Police Chief asked me to bring my agents into the area and conduct under cover operations and they did not mention (NTP). Is it possible that the IRS had a secret project?

I would like to go on record and correct a statement that Mr. Coats made in paragraph four of his letter. My Clothes were not taken in the robbery, and I would think that a Special Intellegence Agent would get the facts straight. In the robbery the items taken were, my nitroglycerine tablets, my revolver, wallet and money. Also in paragraph four, Mr Coats states that he went to visit the subject in prisona year later to seek her assistance. I am sure he was aware of the fact that "Big Barbara" had offered her assistance a year earlier, before her trial, and Mr. Butler Refused it. Big Barbara was prosecuted or tried, to the fullest extent of the law and was sentenced to exactly the amount of time she was willing to plea for, 10 years. Also in paragraph five Mr Coats makes reference to Mr. Butler being "privy to numerius facts that State and Local Investigators were not". Regardless of what Mr Butler was "privy"to from the federal agent, this was a State Case and I have worked with District Attorneys all over Alabama and without exception, where there was a conflict of interest or parallel interest between Federal and State agents, the District Attorney would confide in his local and State agencies. I knowof no case where a single IRS Agent has his own shop and can run his own operation through the State District Attorney unless Mr. Coats found this to be the case with Mr. Butler.

As to the second enclosure, a letter from Chief Kater Williams, he was the shift Captain the night I was robbed and he and his men responded immediately and efficiently. I did not meet "Big Barbara" at a night club, I was taken to her Home by an informant.

I was not present at any of the meetings between Chief Williams and Mr. Butler, but I fail to see how any ongoing investigation could be jepordized by using "Big Barbara" if she was closely supervised. Apparently the ongoing investigation of Noble Beasley was in some sort of jepordy because Mr. Coats went to "Big Barbara" a year later for help. If I remember correctly, Noble Beasley was not tried for a drug violation.

I have attempted to qualify myself, answer your direct questions and comment on the two enclosures. If I can be of further assistance to you please do not hesitate to contact me.

George L. McKee

George L. McKee

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS
STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 12, 1988

Charles R. Butler, Jr., Esq.
Hamilton, Butler, Riddick, Tarlton & Sullivan
P.O. Box 1743
Mobile, AL 36633

Dear Mr. Butler:

In order to supplement the Judiciary Committee's record on your nomination to be United States District Judge, please provide written answers to the enclosed additional questions submitted on behalf of the Committee.

Your answers should be accompanied by your attestation of their accuracy. Please deliver your answers to the Judiciary Committee in Room SD-224, Dirksen Senate Office Building, Washington, DC 20510. Any questions concerning this request should be directed to Andrew Rainer, Investigative Counsel to the Committee, at (202) 224-8191.

Also, you will soon receive, or may have already received, a copy of the transcript of your testimony, which you may edit for typographical errors and other corrections in accordance with the instructions accompanying that transcript. In addition to these editing changes, it would be useful to the Committee if you could review the entire transcript, and submit any additional information or comments that you consider appropriate on any of the issues raised at the hearing.

Thank you for your continued cooperation with the Committee in its consideration of your nomination.

Sincerely,

Patrick Leahy

PATRICK J. LEAHY
United States Senator

ADDITIONAL QUESTIONS FOR CHARLES R. BUTLER, JR.

1. With respect to allegations that, as District Attorney, you failed to follow up on information offered by defendant Barbara Ann Wright, you have provided the Committee with an affidavit from former Sheriff Ray Bridges which questions the veracity of witness William Travis. You have also provided the Committee with letters from Doyle Coats, a former agent of the Internal Revenue Service, and from Kater Williams, a former Captain of the Mobile Police Department.

a) With respect to Mr. Coats' letter: Are you familiar with Mr. Coats' own reputation for veracity and what happened to him after he left the IRS?

b) With respect to Mr. Williams' letter: Is it your view that, after the federal investigation of Noble Beasley resulted in his indictment, no further action needed to be taken against the two Mobile police accused of drug trafficking beyond their transfer to a different division of the police department?

2. With respect to allegations that, as District Attorney, you failed to follow up on information that would have exonerated defendant Evelyn Jordan in the murder of Quency Rhoten, the Committee has obtained copies of several newspaper articles concerning the Jordan case, copies of which are attached.

a) According to an article in the Mobile Register dated November 29, 1971, you were aware by that date that two other women had confessed to Rhoten's murder, and yet you argued against the issuance of murder warrants against them. Is this report accurate? If so, why did you oppose the issuance of the warrants?

b) According to the same article as well as a Mobile Register article dated November 16, 1971, one explanation for why you did not follow up on the confessions by the two other women was to prevent embarassment by Police Captain Don Riddle for arresting the wrong woman. How do you respond to this explanation? What was your relationship with Captain Riddle at the time?

c) You have provided the Committee with a copy of the court docket sheets in the murder case against Jordan and Jordan's habeas corpus suit. If possible, please provide the Committee with copies of the pleadings filed in those cases as well as any pleadings filed in the appeal of the habeas corpus suit.

3. With respect to allegations that, as District Attorney, you failed to follow up on information that members of the County Sheriff's "Mod Squad" were diverting seized narcotics for their own purposes, you have provided the Committee with a letter from attorney Charles Graddick indicating that you asked him to look into an allegation against the "Mod Squad" and that he concluded there was no evidence to support the allegation.

a) Was the allegation that you asked Mr. Graddick to look into the allegation that members of the "Mod Squad" were diverting seized narcotics for their own purposes?

b) If so, what evidence did Mr. Graddick review in his investigation? Did Mr. Graddick compare the records of narcotics seized against the records of narcotics turned over to the state toxicologist? If not, what allegation did Mr. Graddick investigate and what evidence did he review?

c) Were you aware of any other allegations of misconduct by the "Mod Squad" prior to the Squad's disbandment in 1974?

4. In 1986, you filed suit against Michael Langan, Mark Haynes, and a company called Costal Inter-City Health Services to recover a piece of property that had been sold to them at a tax auction due to nonpayment of taxes. You filed the suit on behalf of yourself and a number of other individuals who claimed an interest in the property, and were successful in convincing the Circuit Court in Mobile that your group should be entitled to recover the property. Less than three weeks after the Circuit Court rendered its opinion, you filed a petition with the Board of Equalization in Mobile to lower the tax assessment on the property. You did so without notifying the defendants of the petition, even though the defendants were appealing the Circuit Court decision. You have provided the Committee with a legal opinion as to why you were not required to notify the defendants of your petition and the subsequent proceedings on it before the Board of Equalization.

a) In ruling on your petition, the Board of Equalization seems to have thought that it was ruling on a petition by the defendants. The Board addressed its correspondence on the petition to the defendants' company, Coastal Inter-City Health Services, but mailed the correspondence to your address. Do you think the Board was aware that the defendants had no knowledge of these proceedings?

b) At the time you filed the petition with the Board of Equalization, were you and your clients really the owners of the property? According to the decision of the Circuit Court, your title would not vest until you paid the state the back taxes on the property. However, wasn't one of the purposes of the proceeding before the Board of Equalization to determine how much you needed to pay in back taxes?

c) Your opinion letter indicates that you did not have a legal obligation to notify the defendants of the proceedings before the Board of Equalization because they failed to file a supersedeas bond preserving their interest in the property. However, didn't you file your petition with the Board of Equalization before that bond was due to be filed?

d) Assuming you did not have a legal obligation to notify the defendants of the proceedings in the Board of Equalization, did you consider whether you had an ethical duty, as an attorney, to do so in light of the pendency of the defendants' appeal?

e) If the defendants do prevail in their appeal, won't the amount that they are able to collect be affected by the proceedings before the Board of Equalization, since the amount would then be determined according to the assessed value of the property?

5. The Committee has received a letter from Sam Styron, a former client of yours, who claims that you overbilled him for legal services you performed and that you misrepresented the quantity of those services in an effort to justify the large bill that you sent. A copy of Mr. Styron's letter is attached. How do you respond to his charges?

a) Mr. Styron asserts that you tried on a number of occasions to change the manner in which your firm's fee would be charged in his case from an hourly basis to a contingent fee basis. Do you recall this?

b) Were you aware that other attorneys in the same case had been retained on the basis of a 50% contingency fee?

c) According to Mr. Styron, you billed him a total of $35,013.32 to recover a judgment of $53,754.77. Could you set forth the calculation by which the total amount of your fee was derived (number of hours times rate or rates)?

d) You have provided to the Committee a 25-page document which sets out all the services you and members of your firm performed for Mr. Styron. Was that document prepared at the time you first billed Mr. Styron for your firm's services? If not, what were the circumstances under which it was prepared?

e) You have also provided to the Committee copies of separate bills that you sent to Mr. Styron between May of 1983 and March of 1985. Is it possible to reconcile those bills with the 25-page time summary by showing which services recorded in the 25-page summary are reflected in each of the separate bills? If so, please do so for one of the separate bills.

6. You have provided the Committee with a statement of legal services you performed for Mr. Richard Robson and several companies he controlled. To the extent you may do so without violating the attorney-client privilege, please answer the following questions:

a) What were the circumstances under which Mr. Robson originally retained your services in 1975?

b) When you first undertook representation of Mr. Robson, what statements, if any, did you make to him concerning your involvement or expertise in environmental matters?

c) What discussions did you have with Mr. Robson concerning the fees you would charge him for the services you performed?

Sam Styron
Post Office Box 1318
Foley, Alabama 36536

June 28, 1988

Senate Judiciary Committee
224 Dirkson Building
Washington, D.C. 20510

Dear Sirs:

My name is Sam Styron and I am a crop duster from Foley, Alabama. I am furnishing this information to the Senate Judiciary Committee and to my Senators, Howell Heflin and Richard Shelby to register my opposition to Mr. Charles R. "Randy" Butler, Jr. who has been nominated to be a federal judge in Mobile, Alabama.

I am sending you every scrap of paper I could find that I have in my files relating to this matter. All of that material is enclosed. If anything else turns up or you have any questions, I will be glad to discuss this with you. My telephone number is area code 205-943-5525 and my address is P. O. Box 1318, Foley, Alabama 36536.

In about January of 1983, I hired a Mobile lawyer by the name of Alfred Key to represent me in a dispute with relatives and other people who were making claim to royalties and mineral rights on some property that my mother had owned in Baldwin County, Alabama. Mr. Key explained to me that the resolution of this case depended upon the construction and interpretation of certain deeds and one deed in particular. Mr. Key advised me that it was his opinion that I did own the mineral rights on that certain piece of property and that he would represent me to prove that in court. Amoco Oil had put the money into court and more or less advised me and the other people that we could fight it out amongst ourselves as to who got the money or at least that was how Mr. Key explained it to me. Mr. Key told me that his fee for representation would be $5,000 plus some additional expenses if they were necessary. Mr. Key only represented me for a couple of months before he left that lawfirm. He turned representation of my lawsuit over to Mr. Randy Butler.

I assumed I was in good hands because Mr. Butler was a member of a prominent lawfirm and he assured me that he had lots of experience in oil and gas and that he looked forward to a prompt settlement or trial of our case. I talked to Mr. Butler about the case and my discussions with Mr. Key.

I knew that Mr. Butler's lawfirm was familiar with this piece of property and the mineral interest because they had earlier issued an opinion in a letter dated July 2, 1981 to Mr. Mason Baker of University of Mississippi and they told him, "We recommend that you acquire a quit claim deed from Ethel J. Styron conveying any royalty interest which she might have retained pursuant to her quit claim deed to Calvert Murray Styron." I am sending you copies of that letter and other letters and bills and other things marked 1,2,3,4,5,6, and 7 from my files.

From March of 1983 until the summer of 1986, Mr. Butler represented me. He explained to me that the difficulty was a lot more complicated than Mr. Key had explained and that it would cost more than the $5,000 I had originally been told. I agreed that if it were more complicated that I understood that I would have to pay more money. Mr. Butler or some of his other lawyers sent me bills and statements which I have enclosed. The first of those was on May 27, 1983 in the amount of $2,048.25. It included a detailed explanation of what had been done though there was no breakdown as to the number of hours or how much I was being charged per hour.

I would receive letters from Mr. Butler as time went on and they would sometimes send me letters or court documents from the other lawyers.

I have sent you copies of all the bills I received from Mr. Butler. Mr. Butler stayed on me real good to make sure that I paid all the monies owed him. The last time I paid Mr. Butler was somewhere around the end of February, 1986 which was right before trial in March of 1986. The total amount I paid Mr. Butler until right before trial was $10,000.00. I have checks or receipts for where I paid him $2,000 (June 29, 1983), $2,500 (June 14, 1984) $1,500 (November 30, 1984), $1,000 (January 16, 1985), $2,000 (June 12, 1985), $1,000 (February

28, 1986).

This case was tried by a Judge without a jury on March 4, 1986 and the Judge decided in our favor about one month later. Mr. Butler talked to me on the phone and we had a discussion about whether the other side would appeal and how long it would be before I could expect my money from Amoco. Mr. Butler told me that if the attorneys on the other side had won, that they would probably get 50% of the money awarded by the Judge. I told him that I didn't know what arrangement the attorneys on the other side had. I thought this was kind of unusual because Mr. Butler had tried to get me to change my fee to a percentage contract on a couple of times. I refused to do this.

Some time in July of 1986 I got a letter from Mr. Butler along with a bill. I just about had a heart attack when I read that he had cashed the check of $53,754.77 and taken out $25,013.32. This would be in addition to the $10,000 I had already paid him for a total of $35,013.32. I immediately called Mr. Butler but he was not in. It was several days before I could get to see him but when I did I told him exactly how I felt which was that he had made up a bunch of hours that didn't exist and put them on my bill which had the effect of giving him a fee of about 60% of the Judge's decision.

At that time, Mr. Butler told me that most of the hours were for the billing dated 11 April 1986 and that he had billed me before he knew the decision of the Judge. I told him that I had never received a bill of 11 April 1986 and he looked through his file and could not produce one. Since that time, he has never been able to produce that bill. It is my opinion that he used the date of April 11 to try and justify the billing so he could say that I was going to be billed win, lose or draw. The first time that that date ever appeared was on the letter of July 8, 1986. He certainly didn't give me a copy of that letter or that bill at any time before or after the verdict.

Mr. Butler went on to tell me that their computer had destroyed all their time records in this case and he would have to go back and recreate my bill from old time sheets. He did that and came up with something which he called "Itemized Statement, Samuel Styron ATS Amoco Production Company, Our File Number 31,786". That statement is 25 pages in length and goes from January 24, 1983 to July 8, 1986. It is for a total of 477.834 hours; total expenses were for $737.60. Mr. Butler, after he had prepared this statement told me that there were some other hours that he discovered that had not been billed and they were added in the itemized statement. He them gave me a piece of paper with the words "Correct Figures" at the top that supposedly showed what I had been billed and what I had paid. Neither his piece of paper called "Correct Figures" or his "Itemization..." make any sense when compared to the itemized billings that I received from May of 1983 through July of 1986. Mr. Butler then wrote me a letter saying that he was unable to account for $1,995.33 in hours which would reduce my bill to $23,617.99. He then tried to get me to sign a statement and release and that he would give me another $2,500, although that's not what his letter says. I refused to take that offer.

Again, I am enclosing all of the materials and papers that I have in my case. I want you also to know that I have been convicted in Federal Court on drug charges. I did cooperate with the Government on numerous other cases and testified under oath in those cases. I filed a grievance with the State Bar and the Mobile Bar Association which referred my complaint to the Fee Dispute Committee. They issued a letter which I have enclosed saying that Mr. Butler and I had communication problems. That may be true but our problems go much deeper. I stand ready, willing and able to vouch for everything I have said and supply any further documents and information which you may require.

Cordially yours,

Sam Styron

SAM STYRON

SS

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK M. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1887)
J. GAILLARD HAMILTON (1899-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1951-1982)

CABLE ADDRESS: HAMILTONS

TELEX: 782007

TELECOPIER (205) 432-4276

July 19, 1988

Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
Room SD 224 Dirksen Senate Office Building
Washington D.C. 20510

Re: CHARLES R. BUTLER, JR.
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA NOMINEE

Dear Senator Leahy:

Enclosed please find my answers to additional questions submitted on behalf of the Committee.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
cc: Honorable Howell Heflin
Honorable Strom Thurmond

ADDITIONAL QUESTIONS FOR CHARLES R. BUTLER, JR.

1. With respect to allegations that, as District Attorney, you failed to follow up on information offered by defendant Barbara Ann Wright, you have provided the Committee with an affidavit from former Sheriff Ray Bridges which questions the veracity of Witness William Travis. You have also provided the Committee with letters from Doyle Coats, a former agent of the Internal Revenue Service, and from Kater Williams, a former Captain of the Mobile Police Department.

a) With respect to Mr. Coats' letter: Are you familiar with Mr. Coats' own reputation for veracity and what happened to him after he left the IRS?

Answer to 1 a): No. I had not seen nor heard from Mr. Coats in over 15 years until he contacted me about a week before my hearing before the Committee.

b) With respect to Mr. Williams' letter: Is it your view that, after the federal investigation of Noble Beasley resulted in his indictment, no further action needed to be taken against the two Mobile police accused of drug trafficking beyond their transfer to a different division of the police department?

Answer to 1 b): After the investigation of Noble Beasley, which had uncovered no evidence of any drug dealings by the Mobile Police Officers, even though I had made the then U.S. Attorney, Charles Whitespunner aware of these allegations by Barbara Ann Wright, there was no subsequent or new evidence presented to me to indicate their involvement.

2. With respect to allegations that, as District Attorney, you failed to follow up on information that would have exonerated defendant, Evelyn Jordan in the murder of Quency Rhoten, the Committee has obtained copies of several newspaper articles concerning the Jordan case, copies of which are attached.

a) According to an article in the Mobile Register dated November 29, 1971, you were aware by that date that two other women had confessed to Rhoten's murder, and yet you argued against the issuance of murder warrants against them. Is this report accurate? If so, why did you oppose the issuance of the warrants?

Answer to 2 a): The newspaper articles, at best, imply that I argued against the issuance of murder warrants, however I have no recollection of having done so. The articles do indicate however that I was opposed to the case against Evelyn

Jordan being dismissed on a motion to dismiss the indictment without a full and complete evidentiary hearing. Obviously the murder of Quency Rhoten developed into a complex case. The article does refresh my recollection that a second woman, Amanda Coleman, had been arrested with Evelyn Jordan.

When Amanda Coleman and Evelyn Jordan had their preliminary hearings, I dismissed the charge against Amanda Coleman when it became apparent the eye witness could not identify her. Later, when Margaret Perry and Gloria Anglin had allegedly confessed, the case became more confused when Margaret Perry's lawyer indicated that she was going to retract her confession. Judge Robertson heard all the evidence at Evelyn Jordan's habeas corpus hearing and must have agreed with the position I took that merely because someone confesses to a crime doesn't necessarily exonerate another accused.

As a previous Public Defender I was keenly aware of and extremely sensitive to people being wrongfully accused. As a new prosecutor my role shifted to presenting evidence of crimes to juries and grand juries. I did that; but at no time did I loose sight of the fact that I still had an obligation to protect the innocent from prosecution. That is why I ultimately presented the evidence against the two other women to the Mobile County Grand Jury and moved for the dismissal of the charges against Evelyn Jordan.

b) According to the same article as well as a Mobile Register article dated November 16, 1971, one explanation for why you did not follow up on the confessions by the two other women was to prevent embarrassment by Police Captain Don Riddle for arresting the wrong woman. How do you respond to this explanation? What was your relationship with Captain Riddle at the time?

Answer to 2 b): I had a good relationship with Captain Don Riddle at the time. When I realized that a mistake may have been made I acted immediately to dismiss the charges against Amanda Coleman who had initially been arrested and charged with Evelyn Jordan. The publicity and notariety surrounding this, the full evidentiary disclosure given this matter at Evelyn Jordan's habeas corpus hearing, and the dismissal of the Amanda Coleman case certainly exposed any possible "embarrassment" to the Police Department. The habeas corpus proceeding simply confused the matter further when the eye witness who had originally identified Evelyn Jordan reaffirmed his identification and one of the alleged "confessors", Margaret Perry's attorney, suggested she would recant her confession. Perhaps my following the letter of the law (that a confession does not necessarily exonerate another accused) was too cautious, but the indictment by of a Grand Jury of Evelyn Jordan, and the action of a lower court judge who had bound her over to a grand jury, and the action of a circuit judge who had denied her petition for habeas corpus, were all factors that I had to weigh in my decision. It is regrettable that Evelyn Jordan stayed in jail even one day, but I followed what I thought at the time was an appropriate course of action and caused her to be freed as soon as the Mobile County Grand Jury indicted the other two women.

c) You have provided the Committee with a copy of the court docket sheets in the murder case against Jordan and Jordan's habeas corpus suit. If possible, please provide the Committee with copies of the pleadings filed in those cases as well as any pleadings filed in the appeal of the habeas corpus suit.

Answer to 2 c): See attached.

3. With respect to allegations that, as District Attorney, you failed to follow up on information that members of the County Sheriff's "Mod Squad" were diverting seized narcotics for their own purposes, you have provided the Committee with a letter from attorney Charles Graddick indicating that you asked him to look into an allegation against the "Mod Squad" and that he concluded there was no evidence to support the allegation.

a) Was the allegation that you asked Mr. Graddick to look into the allegation that members of the "Mod Squad" were diverting seized narcotics for their own purposes?

Answer to 3 a): As I have stated in my testimony I have no independent recollection of the specifics of what I asked Mr. Graddick to investigate. I related to Mr. Graddick in June of 1988 what the staff of the Judiciary Committee told me the allegation was, and as you know Mr. Graddick responded that the matters which Mr. Travis had brought to our attention in the District Attorney's office were without merit.

b) If so, what evidence did Mr. Graddick review in his investigation? Did Mr. Graddick compare the records of narcotics seized against the records of narcotics turned over to the state toxicologist? If not, what allegation did Mr. Graddick investigate and what evidence did he review?

Answer to 3 b): After seventeen years, and the fact that the files from my tenure as District Attorney have been destroyed, and therefore I am not able to retrieve them to examine any details, I simply cannot recall the evidence that he viewed.

c) Were you aware of any other allegations of misconduct by the "Mod Squad" prior to the Squad's disbandment in 1974?

Answer to 3 c): The "Mod Squad" was always a controversial group among law enforcement and the local community because they made a number of mistakes, such as defective search warrants. However, the drug problem was rampant in Mobile at the time and they appeared to be trying to do the best they could. I do not recall other specific allegations of misconduct.

4. In 1986, you filed suit against Michael Langan, Mark Haynes, and a company called Coastal Inter-City Health Services to recover a piece of property that had been sold to them at a tax auction due to nonpayment of taxes. You filed the suit on behalf of yourself and a number of other individuals who claimed an interest in the property, and were successful in convincing the Circuit Court in Mobile that your group should be entitled to recover the property. Less than three weeks after the Circuit Court rendered its opinion, you filed a petition with the Board of Equalization in Mobile to lower the tax assessment on the property. You did so without notifying the defendants of the petition, even though the defendants were appealing the Circuit Court decision. You have provided the Committee with a legal opinion as to why you were not required to notify the defendants of your petition and the subsequent proceedings on it before the Board of Equalization.

a) In ruling on your petition, the Board of Equalization seems to have thought that it was ruling on a petition by the defendants. The Board addressed its correspondence on the petition to the defendants' company, Coastal Inter-City Health Services, but mailed the correspondence to your address. Do you think the Board was aware that the defendants had no knowledge of these proceedings?

Answer to 4 a): The premise of your question 4(a) is incorrect insofar as the Board was responding to my letter of protest I had written to them on behalf of all of the owners of the property who I represented requesting a hearing on the lowering of the taxes. The Board's letter was directed to the protest that I had filed on behalf of all my clients and not to any correspondence from the defendant's company. It erroneously contained the name Coastal Inter-City Health Services. I do not know whether the Board knew that the Defendants had no knowledge of these proceedings.

b) At the time you filed the petition with the Board of Equalization, were you and your clients really the owners of the property? According to the decision of the Circuit Court, your title would not vest until you paid the state the back taxes on the property. However, wasn't one of the purposes of the proceeding before the Board of Equalization to determine how much you needed to pay in back taxes?

Answer to 4 b): It was not a question of whether we were really the owners, the protest letter our firm filed with the Board clearly and fully sets forth all the facts of our interest and our position. We did not protest as owners, but as parties entitled to redeem by virtue of the Circuit Court Order and §40-10-121(c) of the Alabama Code. I also fully disclosed to the Board the interest that Coastal Inter-City Health Services and the other individual defendants had in the property by virtue of the prior tax sale. We simply complied with the letter of the law which allowed us, as parties "having a right to redeem" (under §4-10-121(c)) as Judge Kendall had ruled, to file a protest with the Board. The only notice required to be given was "to the party desiring to redeem". Clearly the defendants were not trying to redeem, so they were not entitled to notice.

c) Your opinion letter indicates that you did not have a legal obligation to notify the defendants of the proceedings before the Board of Equalization because they failed to file a supersedeas bond preserving their interest in the property. However, didn't you file your petition with the Board of Equalization before that bond was due to be filed?

Answer to 4 c): We filed the petition before the bond filing was due because the deadline for filing protests with the Board of Equalization was April 30th, 1987. We did not want that deadline to pass and lose the opportunity to protest the amount of taxes due. Had the supersedeas bond been filed, we would have immediately notified the defendants of our action because the ruling of Judge Kendall would have been stayed by their election to file the supersedeas bond.

d) Assuming you did not have a legal obligation to notify the defendants of the proceedings in the Board of Equalization, did you consider whether you had an ethical duty, as an attorney, to do so in light of the pendency of the defendant's appeal?

Answer to 4 d): It was not my clients', nor my, intention to deny the defendants any of their rights as they clearly had an option to exercise their right to stay Judge Kendall's action by filing a supersedeas bond and they did not. If the Alabama Supreme Court affirms the lower court ruling in our favor, the defendants have suffered no prejudice. They have already been paid (into court) all they are entitled to receive. If the lower court decision is reversed, the action of the Board of Equalization will have been a nullity and the taxes will stand as they were before they were lowered and the defendants will be able to require payment of them to effectuate a redemption.

e) If the defendants do prevail in their appeal, won't the amount that they are able to collect be affected by the proceedings before the Board of Equalization, since the amount would then be determined according to the assessed value of the property?

Answer to 4 e): No. Because as explained in 4(d) above the Board's action in lowering the taxes would have been a nullity.

5. The Committee has received a letter from Sam Styron, a former client of yours, who claims that you overbilled him for legal services you performed and that you misrepresented the quantity of those services in an effort to justify the large bill that you sent. A copy of Mr. Styron's letter is attached. How do you respond to his charges?

Answer to 5: These same charges were presented by Mr. Styron to the Mobile Bar Association Fee Dispute Committee. You have their ruling summarizing his charges and my firm's position and holding that the amount of the fee charged was reasonable.

Mr. Styron failed to tell the Judiciary Committee that whereas his share of the proceeds that Amoco had impleaded into Court was in fact $53,754.77, Amoco had withheld an additional amount in excess of $62,000 which was due Mr. Styron, but which was not paid into Court due to the IRS requirement that recipients of royalty income furnish to payors their tax identification number. As Amoco did not know who would ultimately be entitled to this money, they simply withheld it all. As soon as the judgment was rendered, our firm, not Mr. Styron, furnished Amoco his identification number so that he could be paid the additional $62,000 directly from Amoco.

a) Mr. Styron asserts that you tried on a number of occasions to change the manner in which your firm's fee would be charged in his case from an hourly basis to a contingent fee basis. Do you recall this?

Answer to 5 a): It was Mr. Styron who wanted us to change the fee arrangement to a contingent fee basis, but we explained to him that we could not do that. Had we taken the case on just a one-third contingency, our fee would have been larger because he recovered $53,754.77 from the Court plus approximately $62,000 from Amoco that had not been paid into Court (53,754 + 62,000 = $115,754 x .33 = $38,198 contingent fee).

b) Were you aware that other attorneys in the same case had been retained on the basis of a 50% contingency fee?

Answer to 5 b): Mr. Styron may have told me that his sister's attorney had the case on a 50% contingency fee basis but this was well after he had retained our firm. However it was not our firm's policy to take a case of this nature on that type of arrangement.

c) According to Mr. Styron, you billed him a total of $35,013.32 to recover a judgment of $53,754.77. Could you set forth the calculation by which the total amount of your fee was derived (number of hours times rate or rates)?

Answer to 5 c): First of all, the amount of the judgment is inaccurate. The amount of money in controversy at the time of the judgment for Mr. Styron's interest was approximately $115,754 of which only $53,754.77 had been paid into court by Amoco at some time prior to the judgment being rendered. Mr. Styron subsequently received an additional amount of approximately $62,000 from Amoco as a direct result of the judgment, and has continuously thereafter received monthly royalty checks from production (in amounts unknown to me).

The amount of our fee was derived on the number of hours worked multiplied by the hourly rates of the various lawyers involved. That information has previously been furnished to the Committee on the Judiciary in the form of the 25 page document that I sent to Andy Rainer prior to my hearing on June 29th, 1988.

d) You have provided to the Committee a 25-page document which sets out all the services you and members of your firm performed for Mr. Styron. Was that document prepared at the time you first billed Mr. Styron for your firm's services? If not, what were the circumstances under which it was prepared?

Answer to 5 d): This document was prepared for Mr. Styron at his request after the case was concluded.

e) You have also provided to the Committee copies of separate bills that you sent to Mr. Styron between May of 1983 and March of 1985. Is it possible to reconcile those bills with the 25-page time summary by showing which services recorded in the 25-page summary are reflected in each of the separate bills? If so, please do so for one of the separate bills.

Answer to 5 e): This reconciliation is possible and has in fact already been done because the 25 page summary was prepared partially from the bills and also from computer time. As an exhibit to this Answer I have attached the July 8, 1986 bill for additional charges of $600.00. Also attached are pages 23 and 24 of the 25-page document indicating all the charges incorporated in the additional charges portion of the July 8, 1986 bill, and our office computer printout of the same period of time showing actual billable time of $690.00 which I reduced to $600.

6. You have provided the Committee with a statement of legal services you performed for Mr. Richard Robson and several companies he controlled. To the extent you may do so without violating the attorney-client privilege, please answer the following questions:

a) What were the circumstances under which Mr. Robson originally retained your services in 1975?

Answer to 6 a): I was introduced to Mr. Robson by Jimmy Walsh, a friend and neighbor of mine who worked for Ryan-Walsh Stevedoring Company in Mobile. Mr. Robson had previously approached Mr. Walsh about developing a coal handling facility in Mobile. Mr. Robson needed a lawyer in Mobile and after Mr. Walsh introduced him to me he retained my services.

b) When you first undertook representation of Mr. Robson, what statements, if any, did you make to him concerning your involvement or expertise in environmental matters?

Answer to 6 b): I cannot recall what precise statements, if any, I made to Mr. Robson about my involvement or expertise in environmental matters.

c) What discussions did you have with Mr. Robson concerning the fees you would charge him for the services you performed?

Answer to 6 c): I cannot recall any specific discussions that long ago, but never during the time that Mr.

Robson was billed, nor while he was paying his bills, nor after he received his last bill did he ever complain about the amount or the quality of the services performed.

STATE OF ALABAMA)

COUNTY OF MOBILE)

Before me, the undersigned authority, personally appeared Charles R. Butler, Jr., who, being by me first duly sworn, on oath deposes and says that he has read the answers to the above questions submitted by the United States Senate Committee on the Judiciary and they are true and correct to the best of his knowledge and belief.

CHARLES R. BUTLER, JR.

Subscribed and sworn to before me on this

the ___ day of ____________________, 1988.

NOTARY PUBLIC, MOBILE COUNTY, ALABAMA

EXHIBIT TO 2 (c)

IN RE:

EVELYN JORDAN, Petitioner

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

CASE NO. ____________

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA:

Your Petitioner, Evelyn Jordan, respectfully shows unto this Honorable Court and Your Honor as follows:

I am a political prisoner held in the Mobile County Jail, not for my own political beliefs but for the purpose of protecting from public embarassment, public officials of the City and County of Mobile, Alabama.

The investigation of my case has been so mishandled by the Mobile City Police that I can only believe that I am being held to prevent these facts from becoming publically known. My case was under the supervision of Captain Don Riddle whom it is generally known to have been chosen to be the next Chief of Police of the City of Mobile, Alabama, by the City Commissioner Robert Doyle. Events that have occurred since my indictment can only lead me to believe that the District Attorney for Mobile County, Alabama, is trying to prevent Commissioner Doyle and Captain Riddle from being embarrassed for having arrested the wrong person for the murder of L. Quincy Rhoten in July of 1971, and that even though the District Attorney and the City of Mobile now know beyond any reasonable doubt or cause of any kind that I am innocent of the charges and that the indictment returned against me was based upon no competent evidence in that the only material evidence given to the Grand Jury was the deliberate perjured testimony of one Virgil Broadway, fraud upon our judicial system of the most serious degree, I have bee denied my freedom.

The Sheriff of Mobile County, Deputy W. T. Travis, Chief Detective Tom Dees and Deputy Richard White cannot be praised enough for their help in finding the real suspects in my case and proving my innocence. In an independent investigation they have obtained written confessions which are corroborated by other witnesses and the physical evidence at the scene of the murder. The right thumb print of Margaret Perry, one of those two persons who have confessed, matches a thumbprint taken from the rear window of the automobile of L. Quincy Whoten the night of the murder. The State's witness, Virgil Broadway, even if there were not absolute independent proof that he is lying, said he saw two women at the scene of the crime yet the State has three women in jail.

The Sheriff's Department first made the Mobile Police Department aware of Margaret Perry's implication in this crime on or about October 1, 1971, yet the fingerprints of Margaret Perry were not compared to the prints found at the scene of the crime until the afternoon of November 9, 1971.

I have requested of the District Attorney a hearing to show that I can prove my statements but I have been met with refusal and delay.

I, therefore, say every constitutional right to which I am entitled as a citizen of the State of Alabama and of the United States of America is now being violated and a fraud is being practiced upon our judicial system for all of which I ask to be heard by Your Honors. I am being unlawfully restrained of my liberty.

I pray that a writ of habeas corpus may be issued, directed to the Sheriff of Mobile County, Alabama, commanding him to bring me before Your Honors at such time and place as may be appointed, together with the cause of my detention; then and there to do and receive what should be considered concerning myself.

WITNESS my hand and seal this 2 day of Nov, 1971.

Evelyn Jordan (S)
EVELYN JORDAN, Petitioner

STATE OF ALABAMA)
)
COUNTY OF MOBILE)

Personally appeared before me the undersigned Notary Public, the Petitioner in the foregoing Writ of Habeas Corpus, who was made known to me and who being by me first duly sworn deposes and says that she is the Petitioner as mentioned herein above and that she has read the foregoing allegations contained herein above and that the same are true to the best of her knowledge, information and belief.

Evelyn Jordan
EVELYN JORDAN, Petitioner

SUBSCRIBED and sworn to before me on the 12th day of Nobember, 1971.

NOTARY PUBLIC MY COMMISSION EXPIRES JAN. 22, 1973

STATE OF ALABAMA)
COUNTY OF MOBILE)

TO THE HONORABLE RAY D. BRIDGES, SHERIFF
MOBILE COUNTY, ALABAMA

You are hereby commanded to have the body of Evelyn Jordan alleged to be detained by you, by whatsoever name the said Evelyn Jordan is called or charged, the cause of such detention, before Hubert P. Robertson Circuit Judge of Mobile County, Alabama, on the 19 day of Nov., 1971, at the Court House of Mobile County, Alabama, at the Hour of 9:30AM to do and receive what shall then and there be considered concerning the said Evelyn Jordan.

Dated this the 15 day of Nov., 1971.

Hubert P. Robertson
Circuit Judge of Mobile County, Alabama

It appearing from the petition in this case that the Petitioner is in prison on a criminal assusation, the said petitioner, or her attorney, is commanded to notify the District Attorney of Mobile County, Alabama, and the Sheriff of Mobile County, Alabama, of the petition filed in this proceeding, and of the time and place at which it is returnable.

Hubert P. Robertson
Circuit Judge of Mobile County, Alabama

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, RAY D. BRIDGES, Sheriff of Mobile County, Alabama, hereby accept service of the notice of the filing of a petition for a writ of Habeas Corpus by Evelyn Jordan, in the Circuit Court of Mobile County, Alabama;

And I do further accept service of a copy of the said petition, which said writ of Habeas Corpus is returnable before the Honorable Hubert P. Robertson Circuit Judge of Mobile County, Alabama, at the Court House of Mobile County, Alabama, on the 19 day of Nov., 1971, at the hour of 9:30AM.

Ray D. Bridges Sheriff
Sheriff
by James G. Chambers
Chief Deputy

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, CHARLES R. BUTLER, JR., District Attorney of Mobile County, Alabama, hereby accept service of the notice of the filing of a petition for a writ of Habeas Corpus by Evelyn Jordan, in the Circuit Court of Mobile County, Alabama;

And I do further accept service of a copy of the said petition, which said writ of Habeas Corpus is returnable before the Honorable Hubert P. Robertson Circuit Judge of Mobile County, Alabama, at the Court House of Mobile County Alabama, on the 17 day of Nov., at the Hour of 9:30AM:

Robt C. Campbell III
District Attorney

STATE [illegible]
I CERT[illegible]
WAS FI[illegible]

NOV 15 5 29 PM '71

EVELYN JORDAN,
Petitioner,
VS.
RAY D. BRIDGES, Sheriff
of Mobile County, Alabama,
Respondent.

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
CRIMINAL DIVISION

CASE NO. 26136-A

Comes now the Respondent, Ray D. Bridges, Sheriff of Mobile County, Alabama, by and through CHARLES R. BUTLER, JR., District Attorney for the Thirteenth Judicial Circuit of Alabama, and for answer to the petition for writ of habeas corpus alleges that complainant is presently confined in the Mobile County Jail pursuant to the action of the Mobile County Grand Jury in indicting the petitioner, Evelyn Jordan. A copy of said indictment is attached hereto as if fully set forth herein, as well as a copy of the Sheriff's Mittimus.

Charles R Butler Jr
CHARLES R. BUTLER, JR.
for SHERIFF RAY D. BRIDGES

CERTIFICATE OF SERVICE

I, Charles R. Butler, Jr., District Attorney for the Thirteenth Judicial Circuit of Alabama, do hereby certify that a copy of the foregoing motion has been served upon the Attorney for the Petitioner, Mr. Peter Palughi, by mailing a copy of said motion to the office of Mr. Palughi, postage pre-paid and properly addressed to him at 164 South Royal Street, Mobile, Alabama on this the 16 day of November, 1971.

Charles R Butler Jr
CHARLES R. BUTLER, JR.
for SHERIFF RAY D. BRIDGES

STATE OF ALA. MOBILE CO.
I CERTIFY THE FOREGOING
WAS FILED ON
NOV 16 3 15 PM '71
CLERK

C. C. CRIMINAL 18—1000—3-71

Grand Jury No. 164

THE STATE OF ALABAMA.
Mobile County.

CIRCUIT COURT OF MOBILE COUNTY

October Session, 19 71

The GRAND JURY of said County charge, that, before the finding of this indictment

EVELYN LOUISE JORDAN

whose name is to the Grand Jury otherwise unknown than as stated,

unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a pistol, against the peace and dignity of the State of Alabama.

Ct II The Grand Jury of said County further charge, that, before the finding of this indictment EVELYN LOUISE JORDAN whose name is to the Grand Jury otherwise unknown than as stated, unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a rifle, against the peace and dignity of the State of Alabama.

Ct III The Grand Jury of said County further charge, that, before the finding of this indictment EVELYN LOUISE JORDAN whose name is to the Grand Jury otherwise unknown than as stated, unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a gun, against the peace and dignity of the State of Alabama.

~~against the peace and dignity of the State of Alabama~~

CHARLES R. BUTLER, JR.
District Attorney for the 13th Judicial Circuit of Alabama
(County of Mobile)

No Prosecutor

A True Bill

Foreman of the Grand Jury.

Bail fixed in open court at $ NO BOND this the 6TH day of October 19 71

Judge.

Presented to the Court by the Foreman of the Grand Jury in the presence of 14 other Grand Jurors

Filed in open court this the 6th day of October 19 71

John E. Mandeville
Clerk, Circuit Court, Mobile County, Alabama.

MEMORANDUM BRIEF

Hon. W. P. Robertson
Judge
Circuit Court
Mobile, Alabama

Dear Judge:

In response to your request for briefs in the case of State v. Evelyn Jordan, I submit the jfollowing informal, memorandum brief on behalf of the Defendant.

Legally the position of the District Attorney and the Defendant is the same. The Defendant as well takes the position that the sufficiency of the evidence cannot be tested on a Motion to Quash unless there be shown by competent evidence that there was no legal, competent evidence before the Grand Jury. The issue is joined in this case on the point of no evidence and on the further point that the indictment was obtained by fraud in that perjured testimony was deliberately given to the Grand Jury. On either point the Defendant makes a godd ground for a motion to quash and should be allowed to prove the allegations of her motion.

1.) The defendant asserts that there is no competent legal evidence before the grand jury which returned the indictment in this case in that such testimony before the grand jury was the result of deliberate fraud on our court. This is not competent legal evidence and since it is not, there is no legal competent evidence before the grand jury to base an indictment. The cases are clear in Alabama that an indictment where there is *no* legal evidence before the grand jury a motion to quash is proper . *Dearer v. State*, 24 Ala. App.. 377, 135 So. 604. *Sparrenberger v. State*, 53 Ala. 481. *Perkins v. State*, 66 Ala. 457, *Hill v. State*, 20 Ala. App 197. Reference is also made to those case cited by the District Attorney in his oral arguments as they lead to the same conclusion of law.

2.) In addition to the grould that there is no legal evidence before the grand jury, there is another good ground for the Motion to Quash. Where a deliberate fraud is practiced on the Grand Jury through perjury, this fact by and of itself is sufficient grounds for a motion to quash brought by the Defendant.

While there is no case in Alabama that fits the fact situation in the present case, the situation here can be compared to where the Grand Jury in addition to hearing other legal evidence violates a statute which prohibits a conviction for seduction without corroborationg evidence of the Complainant. In cases where this was done, the Courts of Ala. have said that this is sufficient basis for the trial court to grant a motion to quash*Cadenhead v. State*, 21 Ala. App. 638.

Page 2.

The present case can also be compared to where a Defendant has been compelled to make statements concerning his case before the Grand Jury which indicted him. The Alabama Courts granted the motion to quash even though there was other legal and competent evidence before the Grand Jury other than the statements of the Defendant. The Court said the fact that the Defendant was compelled to testify before the . Grand Jury was by itself along sufficient to grant a motion to quash. Culbreath v. State, 22 Ala. App. 143, 113 So. 465.

If these case will support a motion to quash, how much more correct for a motion to quash to be granted where a fraud in practiced on our judicial system. Where the sanctity and purity of the Grand Jury is involved, there can be no greater reason to grant a motion to quash. In the case of Sparrenberger v. State, 53 Ala. 481, the Court said.........."The grand jury is the great inquest between the Government and the citizen. It is the highest importance that this institution be preserved in its purity, and that no citizen be tried until he has been regularly accused by the proper tribunal."

The alternative to the State's position in this case is to let an innocent woman remain in jail on a defective indictment when it could be corrected so easily. If there is sufficient legal evidence other than the perjured testimony of the witness Broadway, then let the State proceed to obtain a new indictment. There is a grand jury readily available for this purpose if there be sufficient grounds.

Respectfully submitted

BY: Peter J Palughi

Peter J. Palughi

Attorney for Defendant Evelyn Jordan

CERTIFICATE OF SERVICE

I certify that I have, this date, served this pleading on opposing counsel by placing a copy thereof in the United States Mail with sufficient postage prepaid and affixed thereto, and properly addressed to said counsel.

This the 17 day of Nov 19 71

Peter J Palughi

STATE OF ALABAMA,)
COUNTY OF MOBILE,)

I, John E. Mandeville, Clerk of the Circuit Court of Mobile County Alabama, do hereby certify that the attached are true, correct, and accurate copies of the complaint and warrant in the case of the State of Alabama vs. Evelyn Louise Jorden as the same remains of record in my office.

Witness my hand this the 19th day of November, 1971.

John E. Mandeville
Clerk of the Circuit Court
of Mobile County, Alabama.

26036-A
Courts Exbt #1
B A Howard 11-19-71

IN RE: : IN THE CIRCUIT COURT OF
EVELYN JORDAN : MOBILE COUNTY, ALABAMA
PETITIONER : CASE #________
: WRIT OF HABEAS CORPUS
:

NOTICE OF APPEAL

Comes now Evelyn Jordan, Petitioner herein, by and through her Attorney, and gives notice of appeal from the judgment of this Hon. Court rendered on Tuesday, November 23, 1971 wherein her Writ of Habeas Corpus and the relief requested therein was denied.

Respectfully submitted

BY: Peter J. Palughi
Peter J. Palughi
Attorney for Evelyn Jordan

CERTIFICATE OF SERVICE

I certify that I have, this date, served this pleading on opposing counsel by placing a copy thereof in the United States Mail with sufficient postage prepaid and affixed thereon, and properly addressed to said counsel.

This the 23 day of Nov., 19 71

Peter J. Palughi

STATE [illegible]
I CERTIFY [illegible]
WAS FILED [illegible]

Nov 23 4 57 PM '71

IN RE:	:	IN THE CIRCUIT COURT OF
EVELYN JORDAN	:	MOBILE COUNTY, ALABAMA
PETITIONER	:	CASE # 26036-A
	:	WRIT OF HABEAS CORPUS
	:	

MOTION TO DECLARE EVELYN JORDAN INDIGENT AND TO ORDER TRANSCRIPT OF HABEAS CORPUS PROCEEDINGS PREPARED AT STATE'S EXPENSE

Comes now Evelyn Jordan and shows unto Your Honor that she is indigent and has been determined by Your Honor to be an indigent defendant in Mobile County Circuit Court Criminal Case # 26036-A; that she is without funds to pay for a transcript of evidence of the proceedings in her habeas corpus and that said transcript is material and necessary for the appeal which she has taken from the judgment of this Hon. Court in said proceedings.

Wherefore, Evelyn Jordan, moves this Hon. Court to determine and declare her indigent and to order the transcript of evidence in her habeas corpus proceedings for use in her appeal to be prepared at state's expense.

Respectfully submitted

BY: Peter J. Palughi
PETER J. PALUGHI
ATTORNEY FOR EVELYN JORDAN

CERTIFICATE OF SERVICE

I certify that I have, this date, served this pleading on opposing counsel by placing a copy thereof in the United States Mail with sufficient postage prepaid and affixed thereon, and properly addressed to said counsel.

This the 23 day of Nov. 19 71

Peter J. Palughi

STATE OF [illegible]
I CERTIFY [illegible]
WAS FILED [illegible]
Nov 23 4 17 PM '71
[illegible]
CLERK

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE COURT OF CRIMINAL APPEALS OF ALABAMA

October Term, 19 71-72

To the Clerk of the Circuit Court of Mobile *County, Greeting:*

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

Evelyn Louise Jordan, *Appellant*,

and

The State, *Appellee*,

wherein by said Court, , *it was considered adversely to said appellant*, *were brought before our Court of Criminal Appeals, by appeal taken, pursuant to law, on behalf of said appellant.*

Now, it is hereby certified, That it was thereupon considered by our Court of Criminal Appeals, on the 28th *day of* March 19 72, *that the said appeal be and stand dismissed/* moot, ~~*and that it was further considered that the appellant*~~

~~*pay the costs accruing on said appeal in this Court and in the Court below*~~

Witness, Mollie Jordan, Clerk of the Court of Criminal Appeals of Alabama, at the Capitol,

this the 28th *day of* March, 1972.

Mollie Jordan

Clerk of the Court of Criminal Appeals of Alabama.

THE COURT OF CRIMINAL APPEALS
OF ALABAMA

October Term, 19 71-72

1st Div. No. 267

Evelyn Louise Jordan

Appellant,

v.

The State

Cir. Ct. #26036-A

Appellee.

From Mobile Circuit Court

CERTIFICATE OF DISMISSAL
(No Opinion)

The State of Alabama,
Mobile County. } Filed

this 29 day of March 1972
John E. Mayfield
Clerk

BROWN PRINTING CO., MONTGOMERY

Mobile Police Department
Criminal Investigation Division
July 23, 1971, 1:00 P/M

STATEMENT OF: Virgil Broadway (CM) Age 15, Residence: 516 Apt. B. Dixie Street, Mobile, Alabama, Telephone # 478-6700.

On the night of July 16, 1971, approximately 9:45 P/M, I had left a friends house, Bobby Gene Aaron who lives on Edward Avenue. I was on my way to a store on Felix Street to pick up some cigarettes and chewing gum. I walked down Edward Street to Schwarz Street. I walked down Schwarz Street a short distance and then decided to take a short cut. I came (cam)across James William's yard and when I got approximately half way across Williams yard, I heard four or five shots. When I heard these shots, I looked in the direction of where the shots came from. James Williams house is on the corner of Schwarz Street and Blements Street. As I came on out the path, I was about 15 feet from a red automobile parked on Clements Street, headed West, bearing a Mississippi license and I saw two colored females, one known to me as Evelyn Jordan. Evelyn was on the drivers side of the automobile by the steering wheel. Evelyn Jordan had on a pair of psychedlic pants with bell bottoms and white stripes running down the pants. I also observed Evelyn stooping on the ground, doing something. Also I observed another colored female on the passengers side of the car, with the door open leaning in the automobile as if she was looking for something. I also observed this colored female raised up with the dome light on in the car. This colored female had one tooth out and she is known to me as a female who used to come into the store where I worked at Donald and Andrew Street (Mazelle Grocery Store). She also lives on Donald Street down from the store, in a big white house on the right. Her name I do not know. She had on a pair of blue jeans, blue blouse and a sailor hat, different colors, pulled down on her head all the way around. Evelyn also told the female on the passengers side of the car to hurry up and let's go. To my personal knowledge, I know that Evelyn Jordan had left Mobile and was in Florida, and had returned to Mobile about two weeks ago. About a week ago, I also saw Evelyn and this same woman that was in the car, together, coming to the store at Donald and Andrew Street. After observing this, I walked across Clement Street, into the baseball park and while walking down the sidewalk in the park, I still observed Evelyn and the other woman at the red automobile. I continued on to the store

D.J.
V.B.
A.B.
W.J.

Page # 2:

STATEMENT OF Virgil Broadway, (CM) Age 15

to Edmond's Grocery on Felix Street, off Helveston Street to purchase cigarettes and gum. On my way back from the store, I came back through the base ball park, I saw all the Police around where the car was parked on Clements Street. I came out of the park and went back around on Edward Avenue to Bobby Gene's house. I stayed there for a little while, then I left and walked back around on Clements Street to where the red automobile was and saw a white man laying face down on the drivers side of the automobile where Evelyn Jordan was fooling around on the ground. I observed a lot of blood by the man.

I am positive that the colored female that I saw- by the red automobile, on the drivers side and was fooling around on the ground by the car where I later saw the white man, was Evelyn Jordan because she used to play soft ball in the park with the Ladies team.

I have read the foregoing statement and have had it read to me. I understand its contents fully and clearly and I swear that this is a true and correct statement to the best of my knowledge and belief:

WITNESSES Douglas Jones
Walter Pickett
Herbert Bell

SIGNED Virgil Broadway
Virgil Broadway

26036-A
Courts Exht #4
B Antoine

GS—A35—[illegible]

COMPLAINT

The State of Alabama
COUNTY OF MOBILE

Personally appeared before me, the undersigned Clerk of the Court of General Sessions of Mobile County, Detective Hubert Bell

who, being duly sworn, deposes and says that he has probable cause for believing, and does
Evelyn Louise Jordan
believe, that within the past 12 months, and in Mobile County, State of Alabama, Evelyn Jordan, alias/
did unlawfully and with malice aforethought kill L. Quincey Rhoten by shooting him with a gun or pistol contrary to law and against the peace and dignity of the State of Alabama, and as grounds for said probable

Affiant interviewed a witness who he found to be a prudent person and has, under a sworn statement, gave the following information: This person was on Clement Street at approximately 9:15 P.M. on July 16, 1971 when he heard shots from a gun or pistol and saw within fifteen feet Evelyn Jordan next to the driver's side of an automobile. Evelyn Jordan was wearing striped psychedlic bell-bottom slacks. The body of L. Quincey Rhoten was subsequently found on the street in this area by affiant with four bullet wounds in his neck.

Prior to receiving the above information, affiant had received anonymous information that Evelyn Jordan was seen in the vicinity of the murder at the time it occurred, and feeling that she may have been a witness, interviewed Evelyn Jordan and she admitted being at the scene at the time of the shooting but denied any part in the shooting. Affiant, therefore, prays for a warrant for the arrest of said Evelyn Jordan

Jordan, Evelyn Louise
Atty-P. Palughi for Deft.

CASE No. 9206 164

In Jail
Case set for August 31, 1971

Case continued to Sept. 3 1971

Case continued to Sept. 8 (2 P.M.) 1971

Case continued to Sept 9 1971

Case continued to 19

Case continued to 19

Arrest date: 8/27/71

STATE OF ALABAMA

vs.

Jordan, Evelyn Louise c/f

1901 Merline Lane, Mobile

Birth : 11/6/39

Charge: Murder, First Degree (Tit. 14 Sec. 314) Felony

Court Orders:

8/31/71-Cont'd. at State's motion. Detective Bell on vacation.(J.B.)

9-3-71. Cont'd. at State's request to subp. witnesses. Defense atty. objected to continuance. (Judge Brunson)

9-8-71. P.N.G. (all [illegible] rest)

Recess (Judge Brunson)

9-9-71. Deft's atty. P. Palughi informed the Court he withdrew Deft. testifying in regard to Bond - Grand Jury
9-9-71

No Bond

9/3/71-All State & Dft. wit. re-sub. to be in Ct. 9/8/71 at 2 P.M.

COMPLAINANT

Detective Hubert Bell
c/o Mobile Police Dept.
Mobile, Ala. ✓

WITNESSES FOR STATE:

Home all } 285 Cedar Drive
Mobile, Ala

Virgil Broadway
516 Apt. B. Dixie St.,Mobile, Ala.

Jerry James
406-B. Schwartz St., Mobile, Ala.

Vera Mosley
520 Apt. B. Schwartz St.,Mobile, Ala.

Officer Lester Clark
c/o Mobile Police Dept.

Dr. Grubbs -Mobile County Court House

Dr. Earl Wert
c/o Mobile Infirmary ✓

WITNESSES FOR DEFENDANT:

Emma Day
2001 Edwards Avenue
Mobile, Ala.

Vera Mosely
520 Scharwitz Street
Apt. A or B
Mobile, Ala.

Y. Z. Hunter
City Worker, City of Mobile

Rosemary Miner
623 Wilkinson St., Mobile, Ala.

WARRANT

THE STATE OF ALABAMA
COUNTY OF MOBILE } TO THE SHERIFF OF MOBILE COUNTY, ALABAMA

Complaint on oath having been made before me that the offense of Murder, First Degree

and described in the affidavit on file in this court has been committed, and accusing Evelyn Jordan , alias Evelyn Louise Jordan

thereof, you are therefore commanded forthwith to arrest and bring Evelyn Jordan before the Judge of the Court of General Sessions of Mobile County, Alabama.

Dated 29th day of July 1971

(Signed)
Clerk of The Court of General Sessions of Mobile County, Alabama.

The Court of General Sessions
of Mobile County, Alabama

No.

WARRANT OF ARREST

STATE OF ALABAMA

vs.

alias Evelyn Louise Jordan
Evelyn Jordan ,/ c/f

Miami, Fla.

Executed by not committing to Jail this the ______

day of ______ 19___

Executed by committing to Jail this the 27th.

day of Aug 19 71

Admit to bail in the sum of

$______

by Ray D. Bridges, Sheriff of Mobile County, Ala.

By Pickett. Jones City P.D.
Deputy Sheriff

By______
State Highway Patrol

Admitted to bail in the sum of

$______

COMPLAINANT:—

Detective Hubert Bell
c/o Mobile Police Dept.

Ex 8-27-71
PICKETT JONES

[illegible]

C. C. CRIMINAL 18-[illegible]-3-71

Grand Jury No. 164

THE STATE OF ALABAMA.
Mobile County.

CIRCUIT COURT OF MOBILE COUNTY

October Session, 19 71

The GRAND JURY of said County charge, that, before the finding of this indictment

EVELYN LOUISE JORDAN

whose name is to the Grand Jury otherwise unknown than as stated,

unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a pistol, against the peace and dignity of the State of Alabama.

Ct II The Grand Jury of said County further charge, that, before the finding of this indictment EVELYN LOUISE JORDAN whose name is to the Grand Jury otherwise unknown than as stated, unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a rifle, against the peace and dignity of the State of Alabama.

Ct III The Grand Jury of said County further charge, that, before the finding of this indictment EVELYN LOUISE JORDAN whose name is to the Grand Jury otherwise unknown than as stated, unlawfully and with malice aforethought killed L. Quincey Rhoten by shooting him with a gun, against the peace and dignity of the State of Alabama.

26036-A
Courts Exbt #2
B Howard

~~against the peace and dignity of the State of Alabama.~~

CHARLES R. BUTLER, JR.
District Attorney for the 13th Judicial Circuit of Alabama
(County of Mobile)

No Prosecutor

A True Bill

Foreman of the Grand Jury.

Bail fixed in open court at $ NO BOND this the 6th day of October 19 71

Judge.

Presented to the Court by the Foreman of the Grand Jury in the presence of 14 other Grand Jurors

Filed in open court this the 6th day of October 19 71

John E. Mandeville
Clerk, Circuit Court, Mobile County, Alabama.

STATE OF ALABAMA,
Plaintiff,

VS.

EVELYN JORDAN,
Defendant.

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
CRIMINAL DIVISION
CASE NO. 25,757

MOTION TO QUASH THE INDICTMENT
MOTION TO DISMISS

Comes now, Peter J. Palughi, Attorney for the Defendant in the above styled cause and shows unto Your Honor as follows:

ONE

That in October of 1971 the Defendant was indicted for first degree murder after being bound to the Grand Jury by the Court of General Sessions.

TWO

The Mobile Police Department or the Mobile County Sheriff's Department or both, have subsequent to the indictment of the above named Defendant, obtained a legal, valid, voluntary confession from one Margaret Perry who is presently confined in the Mobile County Jail which admits that she and another person other than the above named Defendant and Amanda Coleman committed the crime with which Evelyn Jordan and Amanda Coleman stand accused.

THREE

The evidence presented by theState at the preliminary hearing in the Court of General Sessions was perjured testimony, by the witness Virgil Broadway.

FOUR

The physical evidence obtained by police investigation is inconsistent with the testimony given by the witness for the State at the preliminary; however, the confession obtained by the law enforcement agencies from third parties is consistent with the physical evidence of the case.

FIVE

The Defendant, through her Attorney, has requested that the District Attorney take action at once to effect a discharge of the Defendant from custody in that the law enforcement agencies and the District Attorney's Office have ample and sufficient proof of the innocence of the Defendant; however, this request was denied. Hence this motion.

WHEREFORE, THE PREMISES CONSIDERED, the Defendant moves this Honorable Court to quash the indictment and to dismiss the charges against the Defendant and to discharge the Defendant from custody.

Respectfully submitted:

By: Peter J. Palughi
Peter J. Palughi, Attorney
for Defendant Evelyn Jordan

STATE OF ALA. MOBILE CO.
I CERTIFY THIS PLEADING
WAS FILED ON
NOV 3 4 51 PM '71
CLERK

sustained

STATE OF ALABAMA, * IN THE CIRCUIT COURT OF
Plaintiff, * MOBILE COUNTY, ALABAMA
VS. * CRIMINAL DIVISION
EVELYN JORDAN, *
Defendant. * CASE NO. 25,757

DEMURRER TO MOTION TO QUASH

Comes now the State of Alabama, by and through Charles R. Butler, Jr., District Attorney for the Thirteenth Judicial Circuit of Alabama, and demurs to the motion to quash indictment and motion to dismiss the indictment and to each paragraph thereof, separately and severally on the following separate and several grounds:

1. Said motion alleges the defensive matter only.

2. Said motion is legally insufficient.

3. Said motion fails to aver facts sufficient to justify the relief requested.

4. The allegations in the motion have been rendered legally insufficient by action of the Mobile County Grand Jury in indicting Evelyn Jordan for First Degree Murder.

Charles R. Butler, Jr.
CHARLES R. BUTLER, JR.
District Attorney
Thirteenth Judicial Circuit
of Alabama (Mobile County)

CERTIFICATE OF SERVICE

I, Charles R. Butler, Jr., District Attorney for the Thirteenth Judicial Circuit of Alabama, do hereby certify that a copy of the foregoing demurrer has been served upon Mr. Peter Palughi, Attorney for Defendant in the above styled cause, by placing said copy in the United States Mail, postage pre-paid and properly addressed to Mr. Palughi at his office, 164 South Royal Street, Mobile, Alabama on this the 9 day of November, 1971.

C R Butler Jr
CHARLES R. BUTLER, JR.
District Attorney
Thirteenth Judicial Circuit
of Alabama (Mobile County)

STA[illegible]
I C[illegible]
WAS FIL[illegible]
NOV 9 [illegible] '71
[illegible]

STATE OF ALABAMA : IN THE CIRCUIT COURT OF
PLAINTIFF : MOBILE COUNTY, ALABAMA
: CRIMINAL DIVISION
V. CASE # 25,757
:
EVELYN JORDAN :
DEFENDANT :

MOTION TO AMEND MOTION TO QUASH

Comes now, Peter J. Palughi, Attorney for the Defendant in the above styled cause, with leave of Court first being had and obtained, moves this Honorable Court to allow him to amend his motion to quash hereto fore filed in this cause by adding thereto paragraph #6 to read as follows:

SIX

The indictment in this cause was found and returned without competent evidence and upon insufficient testimony and evidence. Further the said indictment was found as a result of a fraud upon the court in that perjured testimony was presented as truth and upon this fraudulent testimony the indictment was found and returned.

Respectfully submitted

Peter J. Palughi
by: Peter J. Palughi
Attorney for Defendant

Filed Nov. 10th 1971
John J. Mandeville
Clerk

CERTIFICATE OF SERVICE

I certify that I have, this date, served this pleading on opposing counsel by placing a copy thereof in the United States Mail with sufficient postage prepaid and affixed thereon, and properly addressed to said counsel.

This the 10 day of Nov. 1971

Peter J. Palughi

[illegible]

STATE OF ALABAMA,	*	IN THE CIRCUIT COURT OF
Plaintiff,	*	MOBILE COUNTY, ALABAMA
VS.	*	CRIMINAL DIVISION
EVELYN JORDAN,	*	
Defendant.	*	CASE NO. 25757

DEMURRER TO AMENDED MOTION TO QUASH

Comes now the State of Alabama, by and through Charles R. Butler, Jr., District Attorney for the Thirteenth Judicial Circuit of Alabama, and refiles the demurrer previously filed to the motion to quash and assigns separately and severally the same grounds assigned in the original demurrer to the amended motion to quash.

Charles R. Butler

CHARLES R. BUTLER, JR.
District Attorney
Thirteenth Judicial Circuit
of Alabama (Mobile County)

Filed November 10th 1971
John E Mandeville
Clerk

STATE OF ALABAMA,
Plaintiff,
VS.
EVELYN JORDAN,
Defendant.

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA
CRIMINAL DIVISION
CASE NO. 25,757

MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

Comes now the Defendant Evelyn Jordan and moves this Honorable Court to dismiss the indictment in the case against her in this cause in that her constitutional right to a speedy trial has been violated and denied by the State of Alabama through the conduct of the District Attorney's office in deliberately refusing to give to the Defendant herein the same right to a speedy trial as is afforded all other Defendants in criminal cases prosecuted by the District Attorney of this Judicial Circuit. The policy of the District Attorney's office as has been properly stated several times and reported several times in the news media has been that all defendants indicted by the grand juries in this judicial circuit in Mobile County will have their case set for trial within 60 days of the date on which the indictment was returned against the defendant by said grand juries. The Defendant herein respectfully shows Your Honors that on or about October 1, 1971, she was indicted by the Mobile County Grand Jury for murder in the first degree. Yet her case was not set for trial and has not been set for trial until March 29, 1972.

The Defendant herein respectfully shows Your Honors that the reasons for this delay have been for the purpose of saving the District Attorney's office and the Mobile Police Department embarassment for having arrested the wrong person for the murder of L. Quincy Rhoten. The Sheriff's Department of Mobile County, the Fingerprint Section of the Mobile Police Department, relatives and friends of Margaret Perry and Gloria Anglin and other witnesses and voluminous evidence show that Evelyn Jordan could not have murdered L. Quincy Rhoten; however, the confessors to the murder of L. Quincy Rhoten go unindicted, untried and unpunished for their crimes.

WHEREFORE, the premises considered the Defendant moves this Honorable Court to dismiss the indictment and charge against her.

Evelyn Jordan
EVELYN JORDAN, Defendant

CERTIFICATE OF SERVICE

I certify that I have, this date, served this pleading on opposing counsel by placing a copy thereof in the United States Mail with sufficient postage prepaid and affixed thereon, and properly addressed to said counsel.

This the 1 day of March, 19 72.

Peter Palughi

[illegible] '72

EXHIBIT TO 5(a)

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELLORS AT LAW
P.O. BOX 1743, MOBILE, ALABAMA 36633
[illegible]

July 8, 1986

TO:

Mr. Samuel M. Styron
Post Office Box 1318
Foley, Alabama 36536

Re: Amoco Production Company vs.
Samuel M. Styron
Our File No. 31,786

Receipt of U.S. Treasury check funds from the Clerk of the District Court on July 7, 1986........................$ 53,754.77

Retainage of fees and expenses due Hamilton, Butler as per statement of April 11, 1986..........................$ 25,013.32

Additional charges incurred since statement of April 11, 1986 including the following: conference with Joe Sullivan regarding his conference with Louvetta; conference with Sam Styron's office; conference with Jim Reid; letter to Sam Styron regarding Joe Sullivan's conference with Louvetta; phone call from Sam regarding Louvetta's threat of Motion for New Trial based on new evidence; phone call from Jim Parrish regarding Order and wishes to have lease confirmed and bond released; phone call to Jim Parrish regarding language of Order; conference with Marty Sullivan regarding Styron decree; letter to Bill Linne regarding decree; phone call to Sam Styron regarding social security number and address; preparing final Order; review lease and change final Order to include Calvert Styron's name; phone call to Jim Parrish; forwarding copy of executed decree to Sam Styron; conference with Sam Styron regarding funds in Court; conference with Jack O'Brien regarding bond; phone call to Sam Styron and other miscellaneous services rendered in connection therewith.

..........................$ 600.00

NET SETTLEMENT PAID TO SAM STYRON IN FULL SATISFACTION OF JUDGMENT.............................$ 28,141.45

	Review Ethel's deposition and preparing for cross-examination	.500	CRB
	Conference with Randy Butler regarding trial strategy	.500	PMS
	Deliver Supplemental Trial Brief to Court: compile list of pertinent documents in chronological order; draft motion to amend exhibit list; draft amended exhibit list; conference with Randy Buter regarding trial strategy; draft motion to amend Answer to Interpleader Complaint and claim in interpleader; draft amended answer to Interpleader Complaint and claim in Interpleader; review pleadings in preparation for trial; prepare for conference with client;	5.667	PMS
	Trial preparation	2.333	CRB
	Conference with Sam regarding Wilter's letter to Sonny regarding Quitclaim deed;	2.5	CRB
3-4-86	Prepare for trial; conference with Sonny, Sam and Theo in office; at Federal Court for trial;	9.6	CRB
	Conference with Randy Butler and Sam Styron in preparation for trial; draft motion to Amend Answer to McBride and Reid's Complaint; Draft	9.6	PMS
3-13-86	Dictate bill	.167	CRB
4-3-86	Compute February and March time	1.	PMS
4-21-86	Review order from Court; phone call to Sam Styron;	.6	PMS
4-28-86	Conference with Randy Butler regarding Court's opinion	.2	PMS
	Research memorandum opinion; draft proposed final order; letter to Sam regarding same; continued work on final order; letter to Bill Linne and Jim Parris regarding proposed decree;	1.2	PMS
	Review pleadings file for order	.2	PMS
	Review proposed Final Decree	.2	PMS
4-30-86	Correcting Final Decree to accurately reflect "royalty"; not mineral; letter to Bill Linne and Jim Parris	.6	CRB
	Conference with Randy Butler regarding mineral interest; review pleadings; conference with Randy Butler regarding pleadings and mineral interest;	.6	PMS
5-1-86	Conference with Joe Sullivan, Jr. regarding phone call to Mrs. McBride; phone call to Jim Reid's office;	.4	PMS
	Conference with Marty Sullivan regarding settlement before new trial	.4	JSJR
5-2-86	Interoffice conference with Randy Butler regarding phone call from Louvetta McBride	.2	PMS

	Conference with Joe Sullivan regarding his conference with Louvetta; conference with Sam Styron's office; conference with Jim Reid;	.4	CRB
5-5-86	Letter to Sam Styron regarding Joe Sullivan's conference with Louvetta	.6	CRB
5-8-86	Phone call from Sam Styron regarding Louvetta's threat of Motion for New Trial based on new evidence;	.4	PMS
5-9-86	Phone call from Jim Parris regarding Order and wishes to have lease confirmed and bond released;	.4	PMS
5-12-86	Conference with Randy Butler regarding language Jim Parris wishes to add to Order; Conference with John Donald regarding same		
	Phone call to Jim Parris regarding language of Order	.2	PMS
	Conference with Marty Sullivan regarding Styron decree; conference with Marty Sullivan regarding Amoco's language in decree; letter to Linne regarding decree;	.8	CRB
	Phone call to Sam regarding Social Security number and address; conference with Randy Butler regarding form of Amoco's payment to Sam Styron	.4	PMS
5-13-86	Preparing Final Order	.4	CRB
	Review lease and change Final Order to include Clavert Styron's name; phone call to Jim Parris	.4	PMS
5-27-86	Review final decree	.2	PMS
5-29-86	Forwarding copy of executed decree to Sam Styron	.2	CRB
6-24-86	Phone call to Sam regarding Amoco's payment of suspended monies into Court	.2	PMS
	Phone call from Clerk's office regarding Sam's request for payment	.4	PMS
	Phone call from Sam regarding payment	.4	PMS
6-25-86	Conference with Randy Butler regarding payment	.2	PMS
6-26-86	Conference with Sam Styron regarding funds in Court	.2	CRB
6-30-86	Conference with Jack O'Brian regarding bond; phone call to Sam Styron	.2	CRB
7-8-86	Phone call to Sam's secretary regarding payment	.2	PMS

BILLING MEMORANDUM

DATE REQUESTED THRU: 07/07/86
DATE PREPARED: 07/08/86

CLIENT: (000575)Styron
MATTER: (031786)Styron ats Amoco Prod.

RESPONSIBLE ATTORNEY
CRBJ

PAGE: 1
BMC: 1003

DATE OF SERVICES	WORKING ATTORNEY	BILLABLE HOURS	BILLABLE AMOUNT	SERVICES PERFORMED	SEQ
04/21/86	(101) PMS	0.60	$30.00	Review Order from Court; phone call to Sam Styron;	1
04/28/86	(101) PMS	0.20	$10.00	Conference with Randy Butler regarding Court's opinion;	1
04/28/86	(102) CRBJ	1.20	$108.00	Research memorandum opinion; draft proposed final order; letter to Sam regarding same; continued work on final order; letter to Linne, Paris regarding proposed decree;	1
04/28/86	(101) PMS	0.20	$10.00	Review pleadings file for order;	2
04/28/86	(101) PMS	0.20	$10.00	Review proposed Final Decree;	3
04/30/86	(102) CRBJ	0.60	$54.00	Correcting Final Decree to accurately reflect "royalty"; not mineral; letter to Linne, Paris;	1
04/30/86	(101) PMS	0.60	$30.00	Conference with Randy Butler regarding mineral interest; review pleadings; conference with Randy Butler regarding pleadings and mineral interest;	1
05/01/86	(101) PMS	0.40	$20.00	Conference with Joe Sullivan, Jr. regarding phone call to Mrs. McBride; phone call to Jim Reid's office;	1
05/01/86	(106) JSJR	0.40	$36.00	Conference with PMS re: settlement before new trial.	1
05/02/86	(101) PMS	0.20	$10.00	Interoffice conference with Randy Butler regarding phone call from Louvetta McBride;	1

DATE REQUESTED THRU: 07/07/86
DATE PREPARED: 07/08/86

CLIENT: (000575)Styron
MATTER: (031786)Styron ats Amoco Prod.

RESPONSIBLE ATTORNEY
CRBJ

PAGE: 2
BMC: 1003

DATE OF SERVICES	WORKING ATTORNEY	BILLABLE HOURS	BILLABLE AMOUNT	SERVICES PERFORMED	SEQ
05/02/86	(102) CRBJ	0.40	$36.00	Conference with Joe regarding his conference with Louvetta; conference with Sam's office; conference with Jim Reid;	1
05/05/86	(102) CRBJ	0.60	$54.00	Letter to Styron regarding Joe's conference with Louvetta;	1
05/08/86	(101) PMS	0.40	$20.00	Phone call from Sam regarding Louvetta's threat of Motion for New Trial based on new evidence;	1
05/09/86	(101) PMS	0.40	$20.00	Phone call from Jim Parrish regarding Order and wishes to have lease confirmed and bond released;	1
05/12/86	(101) PMS	0.40	$20.00	~~Conference with Randy Butler regarding language Jim Parris wishes to add to Order; conference with John Donald regarding same;~~	1
05/12/86	(101) PMS	0.20	$10.00	Phone call to Jim Parris regarding language of Order;	2
05/12/86	(102) CRBJ	0.80	$72.00	Conference with Marty Sullivan regarding Styron decree; ~~conference with Marty Sullivan regarding Amoco's language in decree~~; letter to Linne regarding ~~Sam decree~~;	1
05/12/86	(101) PMS	0.40	$20.00	Phone call to Sam regarding Social Security number and address; ~~conference with Randy Butler regarding form of Amoco's payment to~~	3

05/13/86	(102) CRBJ	0.40	$36.00	preparing Final Order;

DATE REQUESTED THRU: 07/07/86
DATE PREPARED: 07/08/86

CLIENT: (000575)Styron
MATTER: (031786)Styron ats Amoco Prod.

RESPONSIBLE ATTORNEY
CRBJ

PAGE: 3
BMC: 1003

DATE OF SERVICES	WORKING ATTORNEY	BILLABLE HOURS	BILLABLE AMOUNT	SERVICES PERFORMED	SEQ
05/13/86	(101) PMS	0.40	$20.00	Review lease and change final Order to include Calvert's name; phone call to Jim Parrish;	1
05/27/86	(101) PMS	0.20	$10.00	~~Review final decree~~;	1
05/29/86	(102) CRBJ	0.20	$18.00	Forwarding copy of executed decree to Sam Styron;	1
06/26/86	(102) CRBJ	0.20	$18.00	conference with Sam Styron regarding funds in Court:	1

06/30/86	(102) CRBJ	0.20	$18.00	conference with Jack O'Brien regarding bond; phone call to Sam Styron;	1

A-T-T-O-R-N-E-Y T-O-T-A-L-S (SERVICES)

(101) PMS	4.80	$240.00	204.00
(102) CRBJ	4.60	~~$414.00~~	366.00
(106) JSJR	0.40	~~$36.00~~	– 30.00
TOTAL BILLABLE SERVICES:	9.80	$690.00	$600.00

TOTAL MEMO EXPENSES:	$0.00
TOTAL OUT-OF-POCKET EXPENSES:	$0.00
TOTAL BILLABLE EXPENSES:	$0.00
TOTAL SERVICES+EXPENSES:	$690.00

DATE REQUESTED THRU: 07/07/86
DATE PREPARED: 07/08/86

CLIENT: (000575)Styron
MATTER: (031786)Styron ats Amoco Prod.

RESPONSIBLE ATTORNEY
CRBJ

PAGE: 5
BMC: 1003

---- MATTER BILLING HISTORY ----

LTD SERVICES HOURS	LTD SERVICES AMOUNT	LTD EXPENSES	LTD TOTALS	LTD BILLINGS	LTD SERVICE WRITE-OFFS	LTD NET BILLING	% VAR
1.20	$76.00	$273.42	$349.42	$25,013.32	$0.00	$25,013.32	1.58

YTD SERVICES HOURS	YTD SERVICES AMOUNT	YTD EXPENSES	YTD TOTALS	YTD BILLINGS	YTD SERVICE WRITE-OFFS	YTD NET BILLING	% VAR
1.20	$76.00	$273.42	$349.42	$25,013.32	$0.00	$25,013.32	0.00

---- OUTSTANDING BILLINGS ----

DATE OF LAST INVOICE	BILLED TOTALS EXPENSES	BILLED TOTALS SERVICES	BILLED TOTALS TOTAL	CURRENT DUE	OVERDUE ACCOUNTS RECEIVABLE 30-60 DAYS	OVERDUE ACCOUNTS RECEIVABLE 60-90 DAYS	OVERDUE ACCOUNTS RECEIVABLE OVER 90 DAYS
04/25/86	$339.09	$24,673.43	$25,012.52	$0.00	$0.00	$25,012.52	$0.00
UNBILLED AS OF 07/07/86:	$0.00	$690.00	$690.00				
TOTAL:	$339.09	$25,363.43	$25,702.52				

DATE REQUESTED THRU: 07/07/86
DATE PREPARED: 07/08/86

CLIENT: (000575)Styron
MATTER: (031786)Styron ats Amoco Prod.

RESPONSIBLE ATTORNEY
CRBJ

PAGE: 6
BMC: 1003

---- INVOICE ALLOCATION ----

ATTY NO.	ATTORNEY INITIALS	ACTUAL HOURS	EXTENDED AMOUNT	INVOICE ALLOCATION	EXPLANATION OF ALLOCATION
101	PMS	4.80	$240.00		
102	CRBJ	4.60	$414.00		
106	JSJR	0.40	$36.00		
	TOTAL SERVICES:	9.80	$690.00		
	TOTAL MEMO EXPENSES:		$0.00		

TOTAL OUT-OF-POCKET EXPENSE:	$0.00	$0.00	DO NOT VARY OUT OF POCKET EXPENSE AMOUNT
UNBILLED AS OF 07/07/86:	$690.00		
UNDISTRIBUTED RETAINERS:	$0.00		
UNALLOCATED CLIENT ADVANCES:	$0.00		

RESP. ATTORNEY:-------------------- AMOUNT TO BE INVOICED: -------------- DATE: --------------

CLIENT PARTNER:--------------

INVOICE INSTRUCTIONS:
- TOTALS ONLY
- INVOICE SERVICES AND EXPENSES
- INVOICE EXPENSES ONLY
- TRANSFER TO WORD PROCESSING

SERVICES FORMAT:
- ATTORNEY INITIALS
- ATTORNEY RANK
- DATE
- INTERNAL INVOICE
- HOURS
- AMOUNT
- NARRATIVE
- SUMMARY

EXPENSES FORMAT
- DATE
- AMOUNT
- NARRATIVE
- SUMMARY

MICHAEL D. LANGAN
ATTORNEY AT LAW
267 HOUSTON STREET
MOBILE, ALABAMA 36606

Phone 478-5205

August 12, 1988

United States Senate
Commitee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Attention: Mr. Andrew Rainer, Investigative Counsel

Re: Nomination of Charles R. Butler, Jr.

Dear Mr. Rainer:

I write this letter in answer to your letter of August 2, 1988 inviting a response to Mr. Butler's answers to questions posed by the Judiciary Committee. I represent Mark A. Haynes and M & R Properties, Inc. in the case of Altmayer v. Langan, Civil Action No. CV-86-2490. I am also the attorney for Coastal Inter-City Health Services, Inc.

In responding to Mr. Butler's answer to the question of whether or not he had any legal or ethical duty to notify my clients of his petition to reduce the assessments or of his receipt of correspondence addressed to my client, a short synopsis of the facts might be helpful to the Committee.

Coastal Inter-City Health Services, Inc. acquired the real property the subject of the lawsuit from the State of Alabama in January 1986. Coastal subsequently deeded the property to Mr. Mark A. Haynes and myself. Mr. Haynes and I subsequently deeded a portion of the property to M & R Properties, Inc. The property was acquired from the State under the provisions of Section 40-10-134 of the Code of Alabama of 1975, and as assignees of such purchaser, we claim the benefits of Section 40-10-135 of the Code of Alabama of 1975. I enclose copies of the two cited Code sections.

Mr. Butler filed suit for judicial redemption by the former owners under Section 40-10-83 of the Code of Alabama of 1975. That code section provides that if the former owners remain in possession, even constructive possession, they are entitled to redeem the property, even from purchasers from the State. There was no real question as to the right to redeem. The only question before Judge Kendall's ruling was the amount of the redemption price, which is basically defined in Section 40-10-135 of the Code of Alabama of 1975. Judge Kendall's unique interpretation of the law raised the question as to whom the redemption price was to be paid. That question is still awaiting decision by the Alabama Supreme Court. The uniqueness of Judge Kendall's ruling is clearly acknowledged by Mr. Butler in his letter to the Board of Equalization of April 21, 1987.

Three weeks after Judge Kendall's ruling, Mr. Butler wrote the Board of Equalization requesting that the tax assessments be reduced. Mr. Butler based his petition upon Section 40-10-121(c) of the Code of Alabama of 1975. On June 30, 1987 the Board entered a final ruling lowering the assessed values for the years 1980 through 1986. The correspondence from the Board of Equalization dated May 8, 1987 and June 30, 1987 were addressed to Coastal Inter-City Health Services, Inc. in care of Charles R. Butler, Jr. at P. O. Box 1743, Mobile, Alabama 36633. Neither my clients nor I received any notice of the Board proceedings until October 21, 1987, when the Board's attorney, Mr. Robert C. Wilson verbally informed me of the proceedings. We made an immediate application for rehearing by letter dated October 21, 1987 and received a reply from the Board of Equalization on October 27, 1987. I enclose copies of both letters. The action of the Board of Equalization in reducing the assessment for all the years subsequent to the year of sale to the State of Alabama is now the subject matter of a declaratory judgment action in the Mobile County Circuit Court, Civil Action No. CV-88-001978. I enclose copies of all pleadings in the declaratory judgment lawsuit, except for the complaint, which has previously been forwarded.

I also enclose copies of Sections 40-10-120, 40-10-121, 40-10-122 and 40-10-83 of the Code of Alabama of 1975. Upon reading these statutes, a general scheme of redemption can be deciphered. It clearly appears that Section 40-10-121(c) was not intended and should not be available to Mr. Butler and his clients.

Mr. Butler and I exchanged letters in November and December of 1987. Contrary to Mr. Butler's assertion in his testimony before the committee (Page 68-69), I did not refrain from filing the lawsuit out of any concern over the Frivolous Lawsuit Act or because I thought the lawsuit lacked merit. We had recently received notice that oral argument would be heard on the case on appeal on December 15, 1987. I was hoping that the Alabama Supreme Court might make a quick decision that would possibly eliminate the need of a second lawsuit. In June of this year, with the one year anniversary of the Board's ruling approaching, I proceeded with the lawsuit. I would also like to point out that in the Motion to Dismiss filed by Mr. Butler in response to the declaratory judgement action, Mr. Butler alleges that the action is barred by the applicable statute of limitations. The assertion of this defense does not quite jive with the Answers he gave the Committee on July 19, 1988, in questions 4d) and 4e).

Mr. Butler's opinion of June 27, 1988, that the Plaintiffs had no "legal duty" to notify the Defendants of their efforts to reduce the ad valorem tax assessments is in my opinion totally non-responsive to the question posed. His opinion sets forth the terminology of Section 40-10-121 (c) of the Code of Alabama of 1975, as defining any notice obligations due my clients. We have never contended that the Plaintiffs had a "legal duty" to give us notice of their actions under that code section. Any "legal notice" should have been given by the Board of Equalization as to any actions taken by the Board concerning our property. It is my opinion that the Board of Equalization was well aware of its obligation to give the property owners notice of its actions concerning the subject property. This notice is usually given to the last party assessing the property. (See Section 40-3-16, Code of Alabama of 1975). That is the reason that the notices mailed by the Board of Equalization were addressed to "Coastal Inter-City Health Services, Inc.". A closer look at the correspondence mailed by the Board of Equalization shows a salutation of "Dear Property Owner". The true question was whether Mr. Butler had any legal or ethical duty to forward a copy of the correspondence to my clients. It is my belief that any judicial nominee must not only comply with the law, but his ethics must be beyond reproach.

Despite it's non-responsiveness, I feel that several comments must be made on Mr. Butler's opinion of June 27, 1988. The opinion rests its validity on two assumptions. The first assumption is that Judge Kendall's order of March 30, 1987, gives the Altmayer group the right to redeem the property "just as if the state had never sold the property to Langan". (Page 2 of opinion). Judge Kendall's order contains no such language. The order requires the Altmayer group to pay the full redemption price, with my clients receiving the amount set forth in the order and with the balance being paid to the Tax Collector. Nowhere in the order does it say, nor can it be inferred, that the Plaintiffs may reapply to the Board to have their obligation under the order reduced. In effect, the Plaintiffs have induced the Board of Equalization to modify Judge Kendall's order.

The second assumption is that Mr. Butler and his clients have the right to proceed under Section 40-10-121 (c). Mr. Butler's opinion states as follows:

> "Upon first reading, it would appear that Section 40-10-121 applies only when a former owner is redeeming tax deliquent property from the state, rather than from a third-party purchaser."

Of course it "appears" to apply to situations where the tax title is still held by the State, because the Legislature intended for that section to mean precisely what it says!

Mr. Butler next proceeds to cite the "unique facts" of this case as entitling his clients to the benefits of Section 40-10-121(c). The only "unique" facts in this case are Judge Kendall's ruling and Mr. Butler's assumptions and extrapolations of that ruling. It is only at this point that Mr. Butler's contorted opinion can point to the provisions of Section 40-10-121 (c), and state "the only notice required is ten days notice of the hearing of the petition to 'the Tax Assessor and party desiring to redeeem, his agents or attorney' ". Therefore, Langan et al are not entitled to notice. I shudder to think of "Judge" Butler, as a sitting federal judge, giving the fundamental concept of "Due Process" such an interpretation.

The notice provisions of Section 40-10-121 (c), used in the intended circumstances, fully conform to the requirements of due process. The statute is intended to apply only to cases where the tax title is still in the State of Alabama. The Tax Assessor is required to receive notice as well as the protesting former owners or party seeking redemption. The Tax Assessor serves as secretary of the Board of Equalization (Section 40-3-6, Code of Alabama of 1975) and he must have notice of the hearing. The Board of Equalization has very broad powers in fixing the values of property and does in fact have the duty to fix the value of all assessed property in the county. (Section 40-3-16, Code of Alabama of 1975) The State of Alabama has no special need for notice because both the Tax Assessor and the Board members are public officials, and presumably, all will duly perform their duties. However, neither the Tax Assessor nor the members of the Board of Equalization may represent taxpayers in any tax dispute, and indeed, are statutorily prohibited from so representing any taxpayer. (See Section 40-3-26, Code of Alabama of 1975).

In view of the above, I am of the opinion that the notices Mr. Butler received, addressed to Coastal Inter-City Health Services, Inc., were in fact intended for my client, the last owner assessing the property. While Mr. Butler had no legal duty to notify my client of his petition for reassessment, his failure to forward the unopened envelope addressed to my client or to at least mail a copy of the contents of same to my client, denied my clients any notice of the proceedings.

Mr. Butler's reliance upon my clients' decision not to file a supersedeas bond as a defense for his failure to notify us of the Board's notices is very frail. Judge Kendall's ruling is not a final decree and will only become so upon the Plaintiffs' payment of the redemption price. The entire argument on the supersedeas bond rests on the assumption that my clients' interest in the property was automatically and completely divested by Judge Kendall's ruling. That argument might have had some merit had the Plaintiffs proceeded to pay the redemption price, which they have failed to do. His opinion also fails to mention that the Defendants have paid an additional year's taxes on the subject property, and that the Plaintiffs have failed to pay the additional taxes plus interest into Court. My clients are the owners of the property until the Plaintiffs pay the redemption price. There is also a question as to whether a supersedeas bond is required. Under Judge Kendall's ruling, my clients are not required to pay any money or to do any act. The decree of the Court will divest the title upon payment of the redemption price. Mr. Butler and his clients are reluctant to pay the redemption price because they know that Judge Kendall's order is not in accordance with the prior Alabama law concerning redemption of tax titles, and that upon a reversal of that order, they will have to pay the redemption price to my clients.

I find Mr. Butler's answer to Committee Question 4d) to be totally evasive, unless, he is equating his "ethical duty" with his legal obligation. In his testimony before the committee, Mr. Butler stated that "as a parting shot, he (Langan) says what I did was unethical, yet there has been no complaint before the bar association or anyone at this point, other than this Committee has brought it to my attention". In late 1987 in a meeting with Mr. Jeff Sessions, United States Attorney in Mobile, Alabama the issue was discussed as to whether Mr. Butler's failure to forward mail addressed to Coastal Inter-City Health Services, Inc., might constitute a possible violation of Title 18, Sections 1701 or 1702, United States Code. We informed Mr. Sessions of the facts as we knew them at the time, and have not pursued the matter any further. If Mr. Butler wishes for me to file a complaint with the bar association, I will oblige him.

I have no further response to Mr. Butler's opinion, testimony and answers to Committee questions.

Sincerely,

Michael D. Langan

MDL

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

MICHAEL D. LANGAN, MARK A. HAYNES,
M & R PROPERTIES, INC., COASTAL
INTER-CITY HEALTH SERVICES, INC.

Plaintiff;

vs.

CASE NO.______________

JAY P. ALTMAYER, JOHN STRAUSS,
ALBERT METZGER, DOROTHY GOLDSMITH,
CHARLES B. ARENDALL, JR., JACK
HYMAN, JOHN E. PATE, JACQUE W.
PATE, ANN PATE ROBERTS, JACK
LAIDLAW, HERMAN MAISEL, AMSOUTH
BANK N.A., as Trustee under the
Will of Robert S. Bacon; CHARLES
R. BUTLER, JR., VENETIA B. FRIEND;
MORGAN GUARANTY TRUST CO. OF NEW
YORK as Trustee under the Will of
Clarice Bloomenthall for the
benefit of Sabine Domec Darnell
and Nicole Domec; Florence Sossaman;
JOHN F. SHARP; J.C. VANANTWERP, JR.;
LEON HOUSE; BOARD OF EQUALIZATION,
MOBILE COUNTY; and A, B, C, who are
the heirs, executors, administrators,
trustees, personal representatives
or assigns of the owners of the
land made the basis of this suit, or
who claim some interest in and to
the property made the basis of this
suit whose names are unknown to the
Plaintiffs at this time but will be
added by amendment when ascertained,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

1. Plaintiffs at all times material hereto have been and are the owners of record of a parcel of land located in Mobile County, Township 29, Area 3, Section 7, Quarter Section 2, Block 000, Parcel 0004, Key No. 71-225, Assessment No. CO-108651, (hereinafter described as the "property") having been deeded same by the State of Alabama on to-wit January 3, 1986; that this property has been assessed to Plaintiffs since the date of said deed, by the Mobile County Tax Assessor, and is presently being assessed to Plaintiff Coastal Inter-City Health Services, Inc. (A copy of said deed and assessment are attached hereto respectfully as Exhibit A and Exhibit B.)

2. That Defendants, John F. Sharp, J. C. VanAntwerp, Jr., and Leon House, are the duly appointed members of the Board of Equalization of Mobile County and the Defendant Board of Equalization of Mobile County, is that agency lawfully created under §40-3-1 Code of Ala. 1975, et seq. and charged with the authority to inspect, review, revise, fix and settle protests concerning the value of all property returned to or listed with the tax assessor of the county for taxation each year (hereinafter Defendants Board et al.).

3. That Defendants Altmayer, Strauss, Metzger, Goldsmith, Arendall, Jr., Hyman, John E. Pate, Jacque W. Pate, Roberts, Laidlaw, Maisel, AmSouth Bank N.A., Butler, Jr., Friend, and Morgan Guaranty Trust Co. of New York (hereinafter "Defendants Altmayer et al.") are the former owners of the property, being represented by Charles R. Butler, Jr, who on behalf of Defendants Altmayer et al., on April 21, 1987 filed a written protest with Defendants Board et al., of all ad valorem taxes due on the property for the tax years 1979 through 1986. (A copy of said protest is attached hereto as Exhibit C.)

4. That on to-wit May 8, 1987, Defendants Board et al., issued a written "special preliminary review" of said protest, and reduced the assessed valuation of the property for one tax year; further, that said written review was addressed to "Coastal Inter-City Health Services, Inc., c/o Charles R. Butler, Jr., P.O. Box 1743, Mobile, Alabama 36633." (A copy of said "special preliminary review" is attached hereto as Exhibit D.)

5. That on to-wit May 11, 1987, Charles R. Butler, Jr., on behalf of Defendants Altmayer et al. filed a "qualified disapproval" of the Defendants Board et al. May 8 "Special preliminary review" and requested relief under the provisions of §40-10-121 (c), Code of Ala. 1975, seeking a reduction of the assessed valuation of the property subsequent to the year for

which the land was sold to the State of Alabama for the non-payment of taxes by the former owners. (A copy of Said "qualified disapproval" is attached hereto as Exhibit E.)

6. That on to-wit June 30, 1987, Defendants Board et al. reduced the assessed value of the property for each of the tax years from October 1, 1980 through October 1, 1987; further, that Defendants Board et al. ruling was addressed to "Coastal Inter-City Health Services, Inc., c/o Charles R. Butler, Jr., P.O. Box 1743, Mobile, Alabama 36633." (A copy of said ruling is attached hereto as Exhibit F.)

7. That on to-wit October 21, 1987, Michael D. Langan, the attorney for Coastal Inter-City Health Services, Inc., was informed by Robert C. Wilson, the attorney for the Defendants Board et al., of the protest filed by Charles R. Butler, Jr., and of the Defendants Board et al. consideration of said protest and reduction of the assessed valuation of the property.

8. Plaintiffs say and show that at no time prior to October 21, 1987, did any of the Plaintiffs receive notice of said protest, or of any of the proceedings conducted by Defendants Board et al., or of Defendants Board et al. "special preliminary review", or of Defendants Board et al. June 30 ruling.

9. Plaintiffs say and show that the mailing address of Coastal Inter-City Health Services, Inc., is not and has never been represented in any capacity by Charles R. Butler, Jr; further that the correct address of Coastal Inter-City Health Services, Inc., at all times material hereto, was 267 Houston Street, Mobile, Alabama 36606.

10. A controversy has arisen and presently exists between Plaintiffs and Defendants concerning Plaintiffs' rights and status as the legal owners of the property and the rights and status of Defendants Altmayer et al. as the former owners of the property.

11. A controversy has arisen and presently exists between Plaintiffs and Defendants Board et al. concerning the authority of said Defendants to act in the manner as described hereinabove.

12. Plaintiffs contend that as the legal owners of the property, they were entitled to receive notice of the protest filed by Charles R. Butler, Jr., and of the proceedings before the Defendants Board et al., and Plaintiffs say and show that they were denied this right.

13. Plaintiffs further contend that Defendants Board et al. ruling of June 30, 1987, in reliance upon §40-10-121 (c) is in error in that this section has no application to the facts of this case, viz. where the property was sold by the State of Alabama to Plaintiff Coastal Inter-City Health Services, Inc.

14. Plaintiffs further contend that Defendants Board et al. "special preliminary review" of May 8, 1987, is in error in that Defendants Altmayer et al. had previously filed two separate protests for the tax years ending October 1, 1979 and October 1, 1980, which protests were denied by the Board. (A copy of said protests and denial is attached hereto collectively as Exhibit G.)

15. Plaintiffs further contend that the Defendants Board et al. June 30, 1987, decision is in error in that §40-10-121 (c) applies only to situations where the legal title to property remains in the State of Alabama after a sale of said property to the State for the non-payment of ad volarem taxes; Plaintiffs say and show that Plaintiffs have been the legal owners of the property since on to-wit January 3, 1986.

16. Plaintiffs further contend that lack of notice of the April 21, 1987 protest, and lack of notice of the proceedings before the Defendants Board et al. has deprived Plaintiffs of due process of law.

17. Plaintiffs further contend that the June 30, 1987 ruling of the Defendants Board et al. in actual effect takes the

property of Plaintiffs by force of law without notice.

18. Plaintiffs say and show that they, as the assignee of the State, are entitled to collect the price of redemption from Defendants Altmayer et al. (the former owners of said property), should Defendants Altmayer et al. redeem the property; further, that the June 30, 1987 ruling of the Defendants Board et al. adversely affects Plaintiffs by reducing the redemption price to which Plaintiffs ~~were~~ entitled prior to said ruling.

19. Plaintiff say and show that doubt or uncertainty exists: (a) as to the authority of Defendants Board et al. to have acted under §40-10-121 (c) Code of Ala. 1975, in reducing the assessed valuation of the property; (b) as to the right or status of Defendants Altmayer et al., as the former owners of the property, in filing a protest of the assessed valuation of the property for each of the tax years 1980 through 1987; (c) as to the amount of the redemption price to be paid by Defendants Altmayer et al, as the former owners of the property, to Plaintiffs in the event Defendants Altmayer et al. desire to redeem the property.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

1. For a judgment declaring that Plaintiffs, as the legal owners of the property, were at all times material hereto, entitled to notice of the protest filed by Charles R. Butler, Jr., and to notice of all proceedings concerning such protest before the Board of Equalization;

2. For a judgment declaring that Plaintiffs were deprived of notice of the protest filed by Charles R. Butler, Jr., and were deprived of notice of the proceedings concerning such protest before the Board of Equalization;

3. For a judgment declaring that the Defendants Board et al. erred in relying upon §40-10-121 (c) in reducing the assessed values of the property for the tax years 1980 through 1987;

4. For an order directing and requiring the Defendants Board et al. to vacate its ruling of June 30, 1987;

5. For an order directing and requiring the Defendants Board et al. to reinstate the assessed valuations of the property, which existed prior to June 30, 1987 ruling, for each of the tax years 1980 through 1987;

6. For an order enjoining the Defendants Board et al. from acting in any manner concerning a review of ad valorem taxes on the property for each of the tax years 1980 through 1987;

7. For costs of suit incurred in this proceeding;

8. For attorney's fees; and

9. For such other further and different relief, the premises considered.

G. WAYNE ASHBEE
Attorney for Michael D. Langan
309 Three Office Park
Mobile, AL 36609

MICHAEL D. LANGAN
Attorney for Mark A. Haynes
M & R Properties, Inc., and
Coastal Inter-City Health
Services, Inc.
267 Houston Street
Mobile, AL 36606

CERTIFICATE OF SERVICE

This is to certify that I have on this ____ day of _________, served a copy of the foregoing complaint upon Robert C. Wilson as the attorney for Defendants Sharp, VanAntwerp, House and the Board of Equalization, 110 S. Dearborn Street, Mobile, AL 36602, by mailing same by United States mail properly addressed and first class postage prepaid.

G. WAYNE ASHBEE

JOSEPH R. BIDEN, Jr., DELAWARE, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS
ROBERT C. BYRD, WEST VIRGINIA
HOWARD M. METZENBAUM, OHIO
DENNIS DeCONCINI, ARIZONA
PATRICK J. LEAHY, VERMONT
HOWELL HEFLIN, ALABAMA
PAUL SIMON, ILLINOIS

STROM THURMOND, SOUTH CAROLINA
ORRIN G. HATCH, UTAH
ALAN K. SIMPSON, WYOMING
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
GORDON J. HUMPHREY, NEW HAMPSHIRE

MARK H. GITENSTEIN, CHIEF COUNSEL
DIANA HUFFMAN, STAFF DIRECTOR
TERRY L. WOOTEN, MINORITY CHIEF COUNSEL
R.J. DUKE SHORT, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

August 29, 1988

Professor Stephen Gillers
New York University School of Law
40 Washington Square South
New York, N.Y. 10012

Dear Professor Gillers:

As we discussed on Friday, an ethical question has arisen in connection with the nomination of Charles Butler to be a judge of the District Court for the Southern District of Alabama. Mr. Butler is currently an attorney in private practice, and the question involves actions he took while representing himself and a number of joint owners in a real property dispute. It would be tremendously helpful to the Committee to have your opinion on whether Mr. Butler violated any ethical rules in his actions in the dispute.

In order to properly frame the ethical question, some background on the underlying land dispute is necessary. Unfortunately, that dispute is a bit complex. The matter began in 1979, when Mr. Butler and the other joint owners ("the owners") of a parcel of undeveloped land in Mobile, Alabama ("the property") failed to pay the ad valorem taxes on the property. As a result, in 1980, the State of Alabama sold the property at a tax auction, at which the State was the successful bidder. Then, in 1986, the state sold the property along with several other auctioned properties at a substantial discount to a company called Coastal Inter-City Health Services, which in turn assigned its rights in the property to Messrs. Michael Langan and Mark Haynes ("the Langan group").

Later in 1986, the owners sought to recover their rights in the property by filing an action for redemption in the state Circuit Court. In the action, the Langan group argued, based on Alabama Code sec. 40-10-135, that in order for the owners to redeem the property, the owners had to pay the Langan group the full amount of unpaid ad valorem taxes on the property. The owners argued, on the other hand, that they were obligated to pay the Langan group only the amount the Langan group had paid for the property and any taxes the Langan group had paid subsequent to the purchase. On March 30, 1987, the Circuit Court ruled that the owners could recover title to the property by paying the Langan group the amount the Langan group had paid for the property plus any subsequent ad valorem taxes and by paying the State the balance of unpaid taxes since 1979.

The Langan group appealed this ruling to the Alabama Supreme Court, where the appeal remains under advisement. However, within three weeks ~~of the~~ ruling of the Circuit Court, Mr. Butler, acting on behalf of the owners, filed a petition with the state Board of Equalization seeking a retroactive reassessment of the value of the property for purposes of determining the amount of back taxes owed for the period 1979 to 1986. Despite the pendency of the Langan group's appeal, Mr. Butler made a decision not to notify the Langan group of the proceedings he initiated in the Board of Equalization. He also failed to notify the Langan group when he received mail from the Board of Equalization incorrectly addressed to "Coastal Inter-City Health Services, Inc. c/o Charles R. Butler" at his own addresss. As a result, the Langan group did not learn until after the Board of Equalization had disbanded for the year that the Board had retroactively lowered the assessed value of the property.

Mr. Langan has provided a statement to the Committee (copy attached) in which he suggests that Mr. Butler acted unethically in failing to forward the mail from the Board of Equalization or to apprise him of the proceedings before the Board of Equalization. He points out that, to this day, he and his partner hold legal title to the property, since the owners have not yet paid him the redemption amount called for by the Circuit Court's order. He has also pointed out that, if he and his partner win their appeal before the Alabama Supreme Court, they will be entitled to recover from the owners the full amount of the taxes on the property that were not paid from 1979 to 1986. Accordingly, their interests were adversely affected by the ruling of the Board of Equalization retroactively lowering the assessed value of the property.

For his part, Mr. Butler has provided an opinion letter to the Committee (copy attached) which states that he had no statutory duty to notify the Langan group of the proceedings before the Board of Equalization and that the interests of the Langan group in the property were fixed when they failed to file a supersedeas bond following the Circuit Court's decision. He has also stated that the letters he received from the Board of Equalization were intended to go to him, not to the Langan group, in response to the petition that he had filed on behalf of the owners.

In addition to these arguments, both Mr. Langan and Mr. Butler have made a number of other statements about the matter, all of which are laid out in the enclosed materials. These materials include: 1) Mr. Butler's oral and written testimony before the Committee on the matter, 2) the opinion letter provided by Mr. Butler to the Committee, with attachments, 3) the statement provided by Mr. Langan to the Committee, with attachments (including copies of the pleadings in a declaratory judgment action that Mr. Langan has now filed), and 4) copies of relevant sections of the Alabama Code.

The question that remains troublesome is whether Mr. Butler had an ethical duty, as opposed to a legal duty, to notify the Langan group of the proceedings before the Board of Equalization or to forward the letters he received from the Board of Equalization addressed to Coastal Inter-City Health Services. Are there any specific provisions of the Canons of Ethics or the Code of Professional Responsiblity of which Mr. Butler has run afoul? I can only reiterate that it would be extremely helpful for the Committee to have the benefit of your views on these questions.

Please let me know if there is any additional information that I can provide, or if you wish to discuss the timing or form of any opinion you are able to provide on the matter. I can be reached at (202) 224-4134 or, by mail, at the Committee's address, 224 Dirksen Senate Office Building, Washington, D.C. 20510.

Thank you again for your help.

Sincerely,

Andrew Rainer
Investigative Counsel

Enclosures

KRAMER, LEVIN, NESSEN, KAMIN & FRANKEL
919 THIRD AVENUE
NEW YORK, N.Y. 10022
(212) 715-9100

STEVEN T. ATKINS
ARTHUR H. AUFSES III
THOMAS D. BALLIETT
MARTIN BALSAM
STUART J. BASKIN
BARRY S. BERGER
MARK D. BRODSKY
MICHAEL J. DELL
RUDOLPH deWINTER
KENNETH H. ECKSTEIN
CHARLOTTE M. FISCHMAN
MARVIN E. FRANKEL
ALAN R. FRIEDMAN
ROBERT M. HELLER
GEOFFREY M. KALMUS
SHERWIN KAMIN
PETER S. KOLEVZON
KENNETH P. KOPELMAN
MICHAEL PAUL KOROTKIN
ARTHUR B. KRAMER
DAVID P. LEVIN
EZRA G. LEVIN

DANIEL P. LEVITT
RICHARD MARLIN
KENNETH J. McCULLOCH
THOMAS H. MORELAND
ELLEN R. NADLER
GARY P. NAFTALIS
MICHAEL J. NASSAU
MICHAEL S. NELSON
MAURICE N. NESSEN
JAY A. NEVELOFF
MICHAEL S. OBERMAN
PAUL S. PEARLMAN
WILLIAM S. PODD
GERALD ROKOFF
PAUL S. SCHREIBER
MAX J. SCHWARTZ
HOWARD A. SOBEL
STEVEN C. TODRYS
HAROLD P. WEINBERGER
RICHARD S. WEISBROAT
JOEL S. ZWEIBEL

JOSHUA M. BERMAN
HARVEY L. FRIEDMAN
ASA S. HERZOG
COUNSEL

M. FRANCES BUCHINSKY
PINCHAS MENDELSON
ASSOCIATE COUNSEL

CABLE ADDRESS
NICKRAL
NICKRAL A

TWX NUMBER
710 581-5340

TELEX NUMBER
645041

AUTOMATIC TELECOPIER
(212) 688-2119

WRITER'S DIRECT NUMBER
(212) 715-9430

September 9, 1988

Andrew Rainer, Esq.
Investigative Counsel
U.S. Senate
Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Mr. Rainer:

Responding to your letter of August 29, 1988, as amplified in our telephone conversations, Professor Stephen Gillers and I have discussed together the ethical questions concerning Mr. Charles Butler that have been raised in relation to his handling of proceedings affecting land in Mobile, Alabama, beginning in 1979. We have concluded that there are grounds for criticism of Mr. Butler's professional conduct, specifically in his failure to give notice of proceedings he conducted before the Board of Equalization. Without restating the facts that appear sufficiently from your letter and the enclosures you sent, I can summarize our joint thoughts as follows:

The Circuit Court decision of March 30, 1987 (Kendall, J.), was a partial, conditional victory for Mr. Butler's clients. One of the conditions for the redemption they sought was their "payment to the Tax Collector of all taxes which accrued, or which would have accrued had Plaintiffs retained title, for the tax years 1979 through 1986. . . . " Thus, even if Judge Kendall's opinion were left unaltered, the defendants had a continuing interest in the prospect that this condition might not be met. When Mr. Butler went before the Board of Equalization to have those taxes reduced by means of a retroactive reassessment, the effort was obviously one his adversaries would have wished to see defeated. With the litigation still in progress, it was arguable that he should have given notice to the other side. At a minimum, one would say that a reasonably generous sense of fairness would have led to the giving of notice. On the other hand, giving Mr. Butler the benefit of the doubt, we do note that his first letter to the Board relayed the history of the matter and the identities of the parties. He may have concluded that the Board would then give notice to defendant just as it is required to notify the assessor.

The situation becomes cloudier when one reads Mr. Butler's answers to the Committee's additional questions submitted with his letter of July 19, 1988. In these answers, he continues to stress that the defendants had not filed a supersedeas bond in connection with their appeal to the Alabama Supreme Court at the time of his filing of a petition to the Board of Equalization. But the account tends to raise more questions than it answers. First, Mr. Butler acknowledges that the time for filing a supersedeas had not yet expired when he filed his petition with the Board. Second, and more important, he says he "would have immediately notified the defendants" upon the filing of the supersedeas bond. This is effectively a damaging admission. It does not appear upon analysis that the filing of the supersedeas bond would make any material difference to the right to notice. There was really nothing in Judge Kendall's decision that the defendants had any need to stay pending their appeal -- at least nothing to stay until or unless plaintiffs met the conditions for redemption. The assertion that notice would have been given after the filing of a supersedeas amounts to a recognition that defendants had visible interests that could have been adversely affected by what went on before the Board of Equalization. We read the record to show that those interests remained alive independent of a bond because (a) the higher the tax the less likely the redemption; and (b) the Alabama Supreme Court might have accepted (and might still accept) defendants' argument, in which case they get the money.

Finally, Mr. Butler's handling of the Board's letter addressed to "Coastal Inter-City Health Services, Inc., c/o Charles R. Butler" adds to the appearance of impropriety. In a situation where he should have recognized his position to be at best ambiguous, this form of address did not leave Mr. Butler free to regard it as a "mistake" and even then to fail to inform Coastal. A letter addressed to "ABC Co. c/o Lawyer X" is not a letter to Lawyer X, especially when the lawyer knows it relates to a matter in contention between the lawyer's clients and the ABC Co. Even if Mr. Butler was correct at the time he sent his first letter, that there was no need for notice to Coastal (contrary to his position about the supersedeas bond), he surely could not be clear that it was proper simply to keep the letter without a word either to the Board or to Coastal.

Mr. Butler was seeking to reduce taxes by using a section of the law written for redemptions directly from the state. Judge Kendall's opinion led Mr. Butler to conclude (or hope) that this section could also be used when the property owner was a private party because, if the opinion stood, the taxes would ultimately go to the state anyway.

We don't quarrel with Mr. Butler's effort to use the statute in this way. However, the defendants had interests, described above, in defeating that effort. While the statute did not contemplate notice to the defendants, that was only because its text does not envision that the statute would be used in circumstances like those of Mr. Butler's case. Nevertheless, the statute does contemplate notice to interested parties. Mr. Butler's effort to expand the statute in effect created additional interested parties.

Mr. Butler may have concluded that the Board would give notice to defendants, just as it was required to notify the tax assessor, and that his first letter (and the Board's own files) would have provided it with sufficient information to do so. When it didn't give notice, however, and furthermore appeared confused about who was making the application to reassess, it was Mr. Butler's duty to announce the error and to take steps to ensure that his adversary would not be denied the due process notice that the statute itself contemplates be given to persons interested in the result.

We cannot speculate on why Mr. Butler did not fulfill this duty. If he truly believed he did not have the duty (a matter for the Committee to decide), that would obviously mitigate the blameworthiness of his conduct. But then we cannot understand Mr. Butler's references to a supersedeas bond and the predicted "nullity" of the Board's decision in the event of reversal. These references (assuming that they are not after-the-fact arguments) show that Mr. Butler made an effort to identify the defendants' interests before the first letter to the Board, presumably because he recognized that those interests gave the defendants certain rights and Mr. Butler certain obligations. Given this recognition, with which we agree, his definition of the defendants' interests (and his obligations) would seem to have been implausibly narrow and begrudging.

Ethical Considerations 7-19 and 7-20 of the Code of Professional Responsibility recognize essential conditions for an enlightened, fair adversary system. Among them is "an informed, impartial tribunal capable of administering justice ...

according to procedures that command public confidence and respect." Ethical Consideration 7-25 cautions lawyers against violating rules of procedure and urges them to "guard against ... unintentional violation of [such rules]." The idea that due process includes notice, and the right to be heard, for a party interested in an event is hardly novel. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Fuentas v. Shevin, 407 U.S. 67 (1972). It is part of our Constitution and part of Alabama's law. Mr. Butler had a duty to the adversary system of justice to assure that these concededly interested defendants were heard on his application to the Board of Equalization.

We hope these thoughts will aid the Committee in its deliberations. If we can be of further assistance, please feel free to call upon us.

Sincerely,

Marvin E. Frankel
Marvin E. Frankel

MEF/MKS

cc: Professor Stephen Gillers

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1836-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1869-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1951-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

September 20, 1988

The United States Senate
Committee on the Judiciary
Washington D.C. 20150
Attn: Senator Patrick J. Leahy

Re: Charles R. Butler, Jr.
Nomination to the United States District
Court For the Southern District of Alabama

Gentlemen:

I have received a copy of Marvin E. Frankel's letter of September 9, 1988 to the Committee's Investigative Counsel, Andrew Rainer.

On September 8th, I had asked Professor Harry Cohen of the University of Alabama School of Law to address the same issues as raised in Mr. Frankel's letter. He reviewed all the pertinent provisions of the Alabama Code, the Alabama Rules of Civil Procedure, pleadings and correspondence to and from the Board of Equalization. Professor Cohen, whose curriculum vitae is attached hereto, is a foremost authority on Alabama real property, procedural, and ethics law. His letter to the Committee dated September 12th, 1988, also attached, reflects his interpretation of Alabama law that there was no duty on my part to notify Langan of the proceedings before the Board of Equalization. This was based in part on my correct interpretation of Alabama law as set out in my letter to the Senate Judiciary Committee of June 27th, 1988 (copy attached, without exhibits) and based on Professor Cohen's extensive knowledge of the Rules Governing of the Conduct of Lawyer's in Alabama.

I hope that this matter will be useful to the Committee in its further consideration of my nomination.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
Enclosures

The University of Alabama
School of Law
Box 1435
Tuscaloosa, Alabama 35487-1435

September 12, 1988

(205) 348-7495

The United States Senate Committee
on the Judiciary
United States Capitol
Washington, DC

Re: Charles R. Butler, Jr.
Nomination to the United States District
Court for the Southern District of Alabama

Gentlemen:

I have been requested by Mr. Charles R. Butler, Jr. to review his actions for any possible impropriety or legal ethics violation which may have resulted from his handling of the matter of Altmayer v. Langan, CV 86-2490 in the Circuit Court of Mobile County, Alabama. I have read the numerous documents which he has provided pertaining to this case.

As I understand the situation, a question has arisen as to Mr. Butler's ethical duty to notify the opposing parties in the Altmayer v. Langan case of an effort by Mr. Butler's clients to reduce the ad valorem tax assessment on certain real property at issue in the litigation.

I have reviewed the matter and in my opinion there is no impropriety or breach of any legal ethics rule on Mr. Butler's part whatsoever. In my opinion there was no legal duty to notify anyone of Mr. Butler's client's actions after the decision of the Circuit Court became final. This point was made by Mr. Butler and his colleagues in their letter of June 27, 1988 to the Committee. I also conclude that there is no ethical duty to give notice under these circumstances to Mr. Langan or anyone else of the appeal to the Board of Equalization by Mr. Butler's clients.

I have also looked through the Rules Governing the Conduct of Lawyers in Alabama, and a number of volumes on legal ethics as well as my notes on the subject and I cannot find anything which would be relevant to the issues posed here. I have also discussed the matter with Professor Richard Thigpen of our faculty who also teaches the Legal Profession course at the University of Alabama School of Law and he agreed with my assessment of this situation.

I conclude by saying that I was surprised when I was first apprised of this matter. I cannot conceive of any irregularity or impropriety being alleged in this case.

Respectfully submitted,

Harry Cohen

Harry Cohen
Marc Ray Clement Professor of Law

HC:cas

HARRY COHEN

Marc Ray Clement Professor of Law

Professor Cohen received his B.A. degree in 1949 and his J.D. in 1951 from Tulane University, where he graduated Order of the Coif and served as Book Review Editor of the **Tulane Law Review**. *He was a Law Clerk for Judges of the Civil District Court, New Orleans, 1951-52; Graduate Fellow at Yale, 1952-53; and was in private practice in Louisiana with the firm of Doyle, Smith & Doyle, 1953-54. Professor Cohen came to The University of Alabama School of Law in 1954 as Assistant Professor, became Associate Professor in 1957 and Professor of Law in 1959. He was Visiting Professor of Law at Louisiana State University in 1965, 1967, and 1976. Professor Cohen teaches Real Property, Real Property Security, Oil and Gas Law, and Legal Ethics.*

BIBLIOGRAPHY

Book

Fundamentals of Land Use Law, The University of Alabama Press (1962).

Fundamentals of Land Use Law (Offset materials, University of Alabama School of Law, 1984).

Real Property Security—Cases and Materials (Offset materials, University of Alabama School of Law, 1984).

Articles

Leasing the Right to Take Coalbed Methane Gas Rights—Are Oil and Gas Lease Clauses Analogous to the Coalbed Gas Situation, 15 **Cum. L. Rev.** ________ (1984) (forthcoming).

Employed Lawyers in England, 9 **J. Legal Profession** ________ (1984) (forthcoming).

Developing and Producing Coalbed Gas—Ownership, Conservation, and Environmental Concerns, 2 **Pace Environ. L. Rev.** ________ (1984) (forthcoming).

John C. Payne—A Law Teacher Par Excellence, 35 **Ala. L. Rev.** 7 (1984).

An Interstate Water Problem Between Mississippi and Alabama—The Escatawpa River, 35 **Ala. L. Rev.** 291 (1984).

Prefaces, 1-9 **J. Legal Profession**.

Legal Issues Involved in Producing Coal Bed Methane Gas, 42 **Ala. Lawyer** 660 (1982).

Mineral Development and the Coastal Areas, 3 **J. Energy Law & Policy** 113 (1982).

In Tribute—Dean Thomas W. Christopher, 32 **Ala. L. Rev.** 5 (1980).

The Relationship Between Water Conservation and Mineral Development, 31 **Ala. L. Rev.** 547 (1980).

Unpopularity and Criticism of Lawyers, 123 **Solicitors' Journal** 931 (1979).

Certification of Trial Lawyers—The Judicious Structuring of the American Legal Profession, 6 **Hofstra L. Rev.** 793 (1978).

Certification of Trial Lawyers—A Judicial Effort to Restructure the American Legal Profession, 3 **J. Legal Profession** 27 (1978).

Lawyer Certification, Civility, 'Good Moral Character,' and Pressures for Conformity, 1 **J. Legal Profession** 59 (1976).

The Fundamentals of Legal Ethics in Alabama, 36 **Ala. Lawyer** 160 (1975).

The B.L.A. 1964-1974: Some American Comparisons and Observations, 118 **Solicitors' Journal** 332 (1974) reprinted in **B.L.A. Solicitor**, page 12 (1974).

American Title Insurance in England? **B.L.A. Solicitor**, page 5 (1975).

Oil and Gas Conveyancing and Leasing in Alabama, Twentieth Annual Louisiana Mineral Law Institute 1 (1973).

Water Legislation Perspectives for Alabama, 26 **Ala. L. Rev.** 177 (1973).

Water Law in Alabama—A Comparative Survey, 24 **Ala. L. Rev.** 453 (1972).

The British Legal Association—What are These People Doing?, **B.L.A. Solicitor**, page 5 (1972).

The Lawyer's Public and Private Conscience, 46 **N.Y.U.L. Rev.** 209 (1971).

Confronting Myth in the American Legal Profession: A Territorial Perspective, 22 **Ala. L. Rev.** 513 (1970).

Natural Resources and Conflicting Interests, **The Birmingham News**, page A-16 (August 11, 1968).

Pluralism in the American Legal Profession, 19 **Ala. L. Rev.** 247 (1967); reprinted in 6 **Illinois Continuing Legal Education** 69 (1968).

The Adequacy of Rules Governing the Conduct of Attorneys in Alabama—A Report to the Committee on Revision of Canons in Ethics, 28 **Ala. Lawyer** 5 (1967).

Ambivalence Affecting Modern American Law Practice, 18 **Ala. L. Rev.** 31 (1965).

The Course in Oil and Gas Law at the School of Law, University of Alabama, **Alabama Law School Alumni Association Bulletin**, No. 5, p. 2 (1959).

Property Theories Affecting the Landowner in a New Oil and Gas Producing State (Part I), 10 **Ala. L. Rev.** 323 (1958).

Property Theories Affecting the Landowner in a New Oil and Gas Producing State (Part II), 11 **Ala. L. Rev.** 221 (1958).

Solidary Obligations, 25 **Tulane L. Rev.** 217 (1951).

Obligations—Breach of Promise to Marry—Art. 1934 La. Civil Code of 1870, 24 **Tulane L. Rev.** 501 (1950).

Offenses—Quasi Offenses—Defects in Bridges and Highways—Liability of Individual Police Juror, 24 **Tulane L. Rev.** 370 (1950).

Municipal Corporations—Quasi Contractual Liability—Ultra Vires Acts—Louisiana Act 73 of 1926—Arts. 1965, 2293, La. Civil Code of 1870, 24 **Tulane L. Rev.** 363 (1950).

Obligations—Quasi Contracts—Art. 2293, Louisiana Civil Code of 1870, 24 **Tulane L. Rev.** 141 (1949).

Book Reviews

Raymond L. Wise, **Legal Ethics**, 19 **Ala. L. Rev.** 584 (1967).

William Trumbull, **Materials on the Lawyer's Professional Responsibility**, 12 **Ala. L. Rev.** 248 (1959).

Wesley A. Sturges, **Cases on Arbitration Law**, 28 **Tulane L. Rev.** 519 (1954).

Maurice H. Merrill, **The Public's Concern with the Fuel Minerals**, 22 **Ala. L. Rev.** 430 (1960).

Martin Meyer, **The Lawyer**, 20 **Ala. L. Rev.** 406 (1968).

Mark D. Howe, **Justice Oliver Wendell Holmes**, Volume II, 16 **Ala. L. Rev.** 266 (1964).

Mark D. Howe, **Justice Oliver Wendell Holmes: The Shaping Years 1841-1870**, 11 **Ala. L. Rev.** 221 (1958).

Reports

Ownership, Conveyancing and Regulation of Coal Bed Gas, in the Development Potential of Coal Methane in the Warrior Basin, SOMED & U.S. Dept. of Interior (1984).

Interstate Water Problems Concerning the Escatawpa River—The Need for Joint Development by Alabama and Mississippi Water Resources Research Institute, Auburn University (1982).

Water Law, Water Conservation and the Development of Energy Resources in the Coastal, Offshore and Flood Plain Areas of Alabama, School of Mines and Energy Development, The University of Alabama (1981).

Municipal Water Supplies, Interbasin Transfers and Interstate Water Problems Confronting Alabama, Office of Energy and Environmental Law (1980).

The Relationship of Alabama Water Law to Water Conservation and the Development of Energy Resources, School of Mines and Energy Development, The University of Alabama (1979).

Flood Plain and Coastal Land Use Controls, Alabama Development Office (1975).

Land Use Law in Alabama, Alabama Development Office (1974).

Legislative Framework for Water Resources Management (with Grubbs), Natural Resources Center, The University of Alabama (1973).

Legislative Needs in Water Resources Management in Alabama (with Grubbs), Natural Resources Center, The University of Alabama (1971).

Land Use Regulations in Flood Prone Areas, Natural Resources Center, The University of Alabama (1970).

Status of Water Resources Management in Alabama (with Grubbs), Natural Resources Center, The University of Alabama (1970).

THE BUTLER NOMINATION

Charles R. "Randy" Butler has been nominated to serve as a Federal District Judge for the Southern District of Alabama. At his June, 1988, confirmation hearing, a number of serious issues arose, and the Senate Judiciary Committee has not yet acted on the nomination. The major problems raised by Mr. Butler's background are as follows.

(1) Unjustified Jailing of Evelyn Jordan--In the summer of 1971, Evelyn Jordan was arrested in Mobile for murder and jailed without bond. Thereafter, two other women confessed to the sheriff's office that they had committed the murder for which Jordan was being held, and provided the sheriff's office with physical evidence linking themselves to the crime involved, including the blood stained clothes that they wore at the time of the killing. The state toxicologist matched the blood on the clothes with that of the victim, and fibers from the victim's car were found on the blood stained clothes. Butler learned of these confessions and related evidence no later than October, 1971, but kept Jordan under indictment and in jail until March, 1972. When the deputy sheriff who had obtained the confessions and other evidence complained to Butler that the wrong woman was being held in jail, Butler responded, "What is it with you? She is just an old black woman up there, I doubt if anybody has missed her."

(2) Refusal to Investigate Drug Dealing by Mobile Officials: "The Man" at City Hall--In 1971, when Butler was the Mobile district attorney, the sheriff's office arrested a Barbara Wright for robbery. In the hope of making a deal for a lighter sentence, Wright disclosed that she was the interstate drug courier for the organization that apparently managed the sale of narcotics in the city of Mobile. She showed sheriff's deputies the corset which she used to smuggle drugs. She also explained that when she arrived in Mobile by plane with a shipment of drugs, she was picked up by two city detectives at the airport, and was taken by them to "the man," who worked at city hall, who told her to whom she should deliver the narcotics. Wright offered to wear a wire and assist law enforcement officials to make a case against the two detectives and their boss at city hall.

The sheriff's office, the IRS and state narcotics officials all favored accepting Wright's offer, but Butler refused. According to the then Chief of the Alabama Narcotics Division, "the reaction of Mr. Butler was one of absolute rejection. He would not even discuss the possibility and gave absolutely no reason for his action or lack of action in this matter. He stunned the enforcement branches by not considering this plea."

(3) Refusal to Investigate Drug Dealing by Mobile Officials: The "Mod Squad"--In the early 1970's, investigation of many narcotics offenses in Mobile was the responsibility of a special unit in the sheriff's office known as the "Mod Squad." A deputy sheriff not in the unit noted recurrent discrepancies between the amount of drugs seized by the squad and the quantity turned in by the squad to the responsible state officials. That deputy, in conjunction with the state toxicologist, systematically compared records in some 300 cases and found that the squad was indeed turning in a substantially smaller quantity of drugs than it was seizing. When the deputy revealed to Butler the results of the investigation, Butler responded, "you are not going to use me to embarrass the sheriff."

Within two days after Butler was told about the investigation, the following events occurred: (i) The desk of the deputy was broken into, and the only object stolen was his notes regarding the discrepancies in drug seizures by the mod squad, (ii) Members of the squad took two "washtubs" full of narcotics out of their office and into their cars, and (iii) squad members pulled from the regular files all the records of their drug seizures, and placed them in the squad's own office.

(4) Ex Parte Board of Equalization Proceeding--Butler is now part owner of a piece of land on which real estate taxes were not paid from 1979 through 1986. In 1986, the State of Alabama seized the land for non-payment of taxes, and then sold it to Coastal Inter-City Health Services. Butler subsequently sought, on behalf of himself and the former owners, to get back the property by paying the back taxes. Under state law, Butler and his clients were entitled to redeem the property in this way; they claimed, however, that although the back taxes and interest were in excess of $27,000, that Coastal should only get the smaller amount which Coastal itself had paid for the land, and that the rest of the back taxes should go to the government. The question of whether Coastal itself is entitled to the full amount of the back taxes is now pending before the Alabama Supreme Court.

While this litigation was pending, Butler asked the Board of Equalization to reduce retroactively the amount of back taxes owed to about $15,000. Despite the fact that Coastal was in court arguing that it had a right to be paid whatever back taxes Butler and his clients owed, Butler deliberately never notified either Coastal or its attorney that he was asking the Board to reduce that amount. Butler received from the Board correspondence addressed to Coastal, but never forwarded it to Coastal or its attorney. When Coastal's attorney finally learned what Butler was up to and sued to overturn the Board's action

cutting the back taxes, Butler argued that the suit was barred because it had not been brought immediately after the Board acted, despite the fact that Butler himself had withheld from Coastal's attorney any notification of the Board's proceeding. Butler insists that he had no ethical obligation to notify Coastal or its attorney about the Board of Equalization's proceeding or about the Board's correspondence addressed to Coastal.

The Butler Nomination

The Committee investigation to date has raised more questions than it has answered regarding Mr. Butler's record, particularly during the period when he served as District Attorney of Mobile. In passing on some other nominations the Committee has not found it necessary to resolve all factual questions, since the underlying disputes concerned only whether a nominee may in the past have used bad judgment, and confirmation seemed appropriate even if the nominee had made such mistakes. Here however, the underlying issues in several instances concern whether Butler engaged in deliberately improper and even criminal actions in the past. Although the evidence before the Committee is not necessarily conclusive on a number of the subsidiary issues, it is sufficient to provide reasonable cause for concern. A federal district judge occupies an extraordinarily sensitive position in the enforcement of federal law, controlling directly the handling of criminal cases, and being privy at times to sensitive confidential information regarding search warrants, wire taps, and informants. The nomination should not be sent to the floor until the legitimate concerns have been definitively resolved.

The posture of the record before the Committee raises two types of problems. First, as to some issues there appear to be direct conflicts in the testimony or written statements. Second, as to a large number of issues the testimony and statements do not provide direct, unambiguous, or sufficiently detailed information. In most instances these problems need to be addressed by sworn testimony before the committee, because of the need for follow up questions, and because some of the relevant witnesses will be reluctant to be forthcoming. A number of the questions which must be pursued will concern alleged past criminal conduct in which the witnesses as well may have been involved, and those witnesses will have to be advised of their right to consult counsel.

I. Rejection of Barbara Wright Offer of Cooperation

In the fall of 1971 Barbara Ann Wright, also known as Big Barbara, was arrested for the robbery of a state narcotics agent. At a meeting with then District Attorney Butler, her own attorney, and others Wright offered to cooperate with law enforcement officials in prosecuting several individuals involved in drug trafficking. Both the acting Chief of the State Narcotics Division and the representative of the Mobile Sheriff's office favored accepting Wright's offer. Butler, however, insisted on refusing Wright's offer.

At the June 29, 1988 Committee hearing the most detailed testimony regarding Wright's offer was from former deputy sheriff Travis, who had attended the meeting:

> [S]he told us that she would give us the big man across the street -- I will not name him, but she said she would give us the two city detectives -- and several other lesser people that we all knew to be in the drug business. Now, the man across the street we did not know . . .
>
> [H]er attorney . . . said, "Barbara, be more specific, what building are you talking about across the street?" She said, "City Hall". She told us that she would give us all of this, that she would wear a wire. She told us that she

> was the courier from Mobile, at times to New Jersey and at times to New York, that [she] brought the drugs back in at the orders of the man across the street, she would be taken to the airport by one or both, generally one of these detectives in question. When her flight would come in, they would be waiting for her.
>
> She showed Officer White and I a corset or girdle-type affair that she would carry 5 pounds of heroin in and it made her look like she was pregnant . . .
>
> This detective would meet her, he would either bring her back to where she would talk to the man across the street at various places, or he would tell her where the man across the street said to take the drugs to, most of the time to Beasley or a Beasley connection and she would take it to him.[1]

The Committee hearing raised questions both regarding the scope of Wright's offer, and the reason for Butler's rejection of it.

(a) "The Man Across the Street"

If Wright indeed offered to identify and assist in the apprehension of the city official who was coordinating narcotics sales in Mobile, that would have been of great importance. As Travis testified, the identity of the Mobile drug kingpin was unknown to law enforcement officials, although "speculation was rife" as to who it might be.[2] On Wright's account Noble Beasley was merely a subordinate of the unidentified official. If the drug kingpin indeed worked in city hall, and was assisted by two detectives, those circumstances might well have jeopardized a wide range of law enforcement activities in Alabama.

At the June 1988 hearing Mr. Butler testified that he clearly remembered Wright having offered to assist in the apprehension of Beasley[3] and the two detectives,[4] but recalled no offer having been made regarding any city official. When asked in general terms about Wright's offer, Butler referred only to Noble Beasley, and explained in detail why he had rejected her offer as to Beasley.[5] When asked specifically about Wright's assertion that the drug trafficking in which she was involved was directed by a city official, however, Butler first pleaded a lapse in memory, and then suggested that no such offer had occurred:

---

[1] Committee Tr. 73-74.

[2] Id. at 73.

> Senator, I do not recall that allegation, but let me say this: Had that allegation been made, I would have followed upon it. That allegation to my knowledge, without the Committee having yet specified to me who that public official was, it is difficult to answer specifically, but I would have to say today that that allegation was not made to me back in 1971.[6]

Butler had ample opportunity, prior to the June Committee hearing, to refresh his recollection regarding the substance of Wright's offer, since the issue had been raised in earlier investigations by the Committee staff, and it would be surprising if Butler had forgotten, even years later, a specific allegation that narcotics trafficking in the City of Mobile was being directed from city hall.

Although there seems to be a direct conflict between Travis' and Butler's testimony regarding whether Wright referred to, and offered to assist in the arrest of, "the man across the street", two other individuals present at that meeting have corroborated Travis' testimony. George McKee, who in the fall of 1971 was the acting Chief of the Alabama Narcotics Division, recalled the statements and offer at issue:

---

[3] Id. at 45-46.

[4] Id. at 47-48.

[5] Id. at 45-48.

[6] Id. at 48.

> Barbara Wright, through her attorney John Coleman, did offer to wear a wire and to attempt to give us Noble Beasley, two City Police Officers, and "THE MAN" in the Court House, implying, an elected public official. The deal was that she would wear a wire or cut me or another agent in on the action and PLEAD GUILTY TO THE ROBBERY COUNT AND TAKE 10 "TEN" YEARS, The reaction of Mr. Butler was one of absolute rejection. He would not even discuss the possibility and gave absolutely no reason for his action or lack of action in this matter. He stunned the enforcement branches by not considering this plan.[7]

Wright's attorney confirmed McKee's and Travis' accounts:

> I was at the initial meeting held in the office of Mr. Butler . . . The people present included Deputy Travis, State Investigator George McKee, Barbara (Big Barbara) Wright, and myself. At this meeting she offered to "wear a wire" so that her conversations could be taped. This was to be done as she gathered evidence against two police officers and "the man across the street." Across the street could have only referred to City Hall or the Police Building. . . My impression was . . . that she was offering to implicate someone in the City Government or a high ranking member of the Police Department . . . My reaction to [Butler's] denial to use her assistance was one of astonishment. I thought then, and still think, that Butler was trying to protect someone in the Police Department or in City Government.[8]

When questioned about this matter later in the June hearing, Butler reverted to asserting that he merely did not recall an allegation about "the man across the street", but insisted that had such a charge been made he would have thoroughly investigated the matter:

---

[7] Letter of George McKee to Andrew Rainer, July 15, 1988, p.2.

[8] Letter of John Coleman to Andrew Rainer, July 26, 1988.

> Senator Heflin . . . [D]o you recall anything of what was said about whether there was an official or a county official or someone --
>
> Mr. Butler. Senator, I do not, but let me say this: I was called on to investigate other public officials in my tenure as District Attorney and I did. I called grand juries into session for the specific purpose of investigating Mobile County Commissioners . . . so I would have responded back in 1971 to such an allegation by satisfying myself then that, yes, there was enough evidence, or no, there was not, to call a grand jury and I must have satisfied myself, although today I cannot tell you that I recall the exact incident.[9]

The specific offer made by Wright was either to wear a wire, or to introduce a narcotics agent to the drug dealers involved. Even if, for some reason, this was inappropriate, Butler could have requested Wright's cooperation and assistance in any number of other ways -- identifying "the man across the street", identifying her sources in New York and New Jersey, providing a statement that could be used as the basis of search warrants or wiretaps, or testifying against Beasley, the detectives, or "the man." Once Beasley was successfully prosecuted, he could have been asked to identify the source of the narcotics which he allegedly distributed, and specifically questioned about Wright's allegations. Nothing presently before the Committee suggests that Butler took any of these steps; there is no indication that Butler ever even asked Wright to disclose to him or other law enforcement officials who "the man" was. If in fact Butler never attempted to learn the identity of this official, it is hard to see how Butler could have "satisfied himself" that the official was innocent.

---

[9] Tr. 56-57.

(b) The Two Detectives

Butler, Travis, Coleman and McKee all agree that at the 1971 meeting Wright identified, and offered to assist law enforcement officials in prosecuting, two police detectives allegedly involved in the distribution of narcotics to various drug dealers in Mobile. This allegation, if true, not only implicated the detectives in criminal activity and in a deliberate failure to stop narcotics dealing by their associates, but also indicated that the officers were likely to be passing on to those associates any information they received about ongoing criminal investigations, informants, wiretaps or search warrants. Butler rejected Wright's offer to cooperate in making a case against these officers, and they remained on the force for years thereafter. One eventually retired, and the other was ultimately convicted of criminal activity apparently unrelated to Wright's allegations.

Butler explained at the June hearing that he had declined Wright's offer to wear a wire in discussions with the detectives because he feared doing so might have jeopardized an ongoing investigation of Noble Beasley, one of the dealers to whom the detectives were allegedly supplying narcotics:

> I felt it would jeopardize the Federal investigation that was going on on Noble Beasley, because the allegation, as I recall it, was that the two officers and Beasley were somehow connected . . . so that using Barbara Wright in an effort to get any of them would in my judgment have jeopardized the major investigation

> that was going on.[10]

If there was in fact Butler's reason for declining Wright's offer, it would not weigh against Butler's fitness that another prosecutor might have handled the matter differently.

The record before the Committee, however, is not sufficiently complete to permit an informed evaluation of Butler's explanation. First, it is unclear whether Wright's charges were related to the particular investigation of Beasley that was occurring at the time of Wright's charges. There appear at various times during this era to have been three distinct investigations of Beasley, one concerning fire bombings, one concerning tax evasion, and one concerning drug trafficking; the record contains apparently conflicting suggestions as to which of these investigations was ongoing when Wright made her offer. A review of the records of the Beasley case might resolve this. Second, Butler's testimony suggested that his rejection of Wright's proffered assistance may have been only temporary:

> Senator Leahy. Did you feel any need to use her offer in undercover activity against these two officers.
>
> Mr. Butler. No, sir, not at that time.[11]

Whether or not Butler sought to make use of Wright's proffered cooperation in a manner other than by having her wear a wire is of considerable importance. Regardless of whether she ever wore a wire, Wright could have immediately provided Butler, without conceivably jeopardizing the Beasley investigation, with considerable details about the operations of the two detectives, with testimony against them or with statements constituting a basis for search warrants or wiretaps. If Wright's charge were indeed related to the investigation of Beasley, but undercover work was inappropriate, her statements could have provided a basis for search warrants or wiretaps against Beasley as well, and her testimony would presumably have been useful at Beasley's trial. If Butler, after rejecting Wright's offer to wear a wire, suggested a plea bargain in return for these other forms of cooperation, that would probably put to rest concerns that he may have been trying to protect the detectives or their superiors. If, on the other hand, Butler refused to accept Wright's proffered assistance in any of the possible ways that would not have adversely affected the Beasley investigation, that refusal would be difficult to explain.

---

[10] Tr. 48.

[11] Tr. 48.

It is also unclear what Butler understood the police department itself to be doing about Wright's allegations, and what the police in fact did. Butler's own account says only that the two officers were transferred into positions where they were less likely to be able to compromise the Beasley case:

> [T]he police lieutenant who was involved in the undercover . . . investigation . . . began to monitor the situation . . . [H]e transferred them out of the Detective Division of the Mobile Police Department and put them in the Patrol Division so that they would not be in as close a position as they were to have perhaps, if the allegations were true that Barbara Wright made, to have tipped off Mr. Beasley or somehow jeopardize that ongoing investigation.[12]

---

[12] TR. p.47.

It is unclear whether prior to this transfer the two detectives had some knowledge of the Beasley investigation; if that was the case, and Wright's allegations were correct, then the Beasley investigation itself may already have been seriously undermined. What role the detectives played prior to this transfer is of considerable importance. If the effect of Wright's allegation was that detectives involved in the Beasley investigation itself were criminal associates of Beasley, it obviously made no sense to reject Wright's offer of cooperation because it might interfere with an already fatally compromised investigation. The Lieutenant referred to by Butler, on the other hand, described the transfer of the two detectives without reference to any threat the officers might in their prior positions have posed to the Beasley investigation:

> As to the investigators, rumors, some of which I personally investigated were continually being heard regarding those officers and other personnel. After I assumed command of the Criminal Investigation Division, I arranged the two investigators transfer to another division while we continued investigation into the so called allegations. [13]

Several important things about these two sentences are unclear: (i) does the reference to "rumors" about the same officers mean that Wright's statements confirmed prior similar allegations, or is the use of the word "rumor" simply a rhetorical device to minimize the significance of all such charges?, (ii) was the transfer of the detectives during the investigation of Wright's charges, or of some other charges?, (iii) does the phrase "so called allegations" suggest that Williams doubted the allegations were really ever made, or regarded them as frivolous?, (iv) were Wright's allegations actually investigated, and if so by whom?, (v) how, if at all, were Wright's allegations resolved?

---

[13] Letter of Kater Williams, June 27, 1988, p. 2.

In the case of the Police Department, as in the case of Butler himself, the central question is whether the authorities asked Wright to assist them by providing statements and details about the alleged activities of the detectives. Because a meaningful request for such assistance would have had to be part of a plea bargain discussion, Butler would presumably have known whether or not the police pursued the matter in that manner. The statements which the Committee has from Butler, McKee, Coleman and Williams are not sufficient to resolve that issue, for they do not describe what steps, if any, were taken to pursue Wright's allegations after her offer to wear a wire was rejected.

(c) Additional Investigation

The question raised by the information before the Committee is not whether Butler made an error of judgment in rejecting Wright's offer of cooperation, but whether he rejected that offer, as charged most expressly by Coleman, in order to protect city officials who were engaged in drug trafficking. The evidence already in the possession of the Committee does not conclusively establish why Butler rejected the proffered assistance in apprehending several high level drug dealers, but the charge is too serious to permit positive action on the nomination until all questions about the matter have been resolved. If Coleman's interpretation of the events is correct--a possibility which cannot be ruled out -- it would not only compel the conclusion that Butler was unfit for federal office, but would suggest that Butler could be subject to improper influence by any persons with knowledge of what actually occurred in 1971.

The most direct, possibly the only reliable way to assess Butler's rejection of Wright's offer is for the Committee to ascertain whether Wright's allegations were correct. If Wright's allegations were unfounded, and there were no city officials involved, as she claimed, in drug trafficking, then there would have been no city official whom Butler could have been protecting. If Wright's allegations were accurate, that would not by itself demonstrate impropriety on Butler's part, but it would lead to additional highly relevant information. First, if the two detectives and "the man" were indeed narcotics dealers, it is likely that one or more of them would have known of any coverup on Butler's part. Second, if those officials were engaged in drug trafficking, the nature of their conduct -- and the accuracy of Wright's description -- would bear on the plausibility of Butler's claim that he lacked sufficient evidence to pursue the matter.

The posture of this issue does not require a generalized inquiry into drug trafficking in Mobile; the Committee has the names of four of the five individuals who would have personal knowledge of the accuracy of Wright's allegations -- Wright, Beasley, and the two detectives. If the distribution of narcotics was indeed being directed by "the man" in city hall, any one of these witnesses could identify him. Because, however, the questioning of these witnesses would in each case involve possible past criminal conduct on the part of each, the witnesses ought to be questioned under oath, and under circumstances which provide them with a reasonable opportunity to obtain the advice of counsel.

A number of subsidiary issues have not been fully resolved and require further inquiry:

(1) Wright's attorney, McKee, and Travis should be asked whether Butler expressed interest in any form of cooperation by Wright other than wearing a wire -- e.g. providing the name of "the man," testimony, or information that might provide the basis for a search warrant. This inquiry could be made by letter or at a hearing;

(2) An officer White, mentioned by Travis, may have additional information about Wright's disclosures.

(3) A copy of the file in the Beasley prosecution would throw some light on the relationship of that case, and the investigation which proceeded it, to Wright's allegations.

(5) Kater Williams asserts in his letter of June 27, 1988, that there were other allegations of misconduct against the two detectives, and that in light of some allegation -- which is unclear -- they were temporarily transferred. It would be useful to review the personnel files of these two officers, and copies of any investigative reports on either, to ascertain whether and in what manner Wright's charges were investigated.

II. The Mod Squad

(a) The Alleged Criminal Activity

The Mod Squad was a special unit created in the early 1970's in the Mobile sheriff's office to deal with drug offenses. At the June 1988 hearing former deputy sheriff Travis testified that in around 1973 he conducted, together with the state toxicologist, Dr. Nelson Grubbs, an investigation of apparent discrepancies between the quantities of drugs seized by the Mod Squad, and the quantities subsequently turned in by Squad members to the toxicologist, who was responsible for testing, testifying about, and ultimately destroying the narcotics. Travis and the toxicologist compared the amount of drugs seized and turned in in several hundred cases, and found major discrepancies. Travis testified that he brought the results of the investigation to Butler's attention, and suggested that the grand jury be asked to investigate the diversion of drugs by the Mod Squad, and to subpoena the relevant records. According to Travis, Butler responded "Travis, you are not going to use me to embarrass the sheriff." [14]

When questioned about this matter at the June 1988 hearing, Butler referred the Committee to a letter on the subject from a former member of his staff:

> Senator Leahy: We were told that in early '73 you were apprised of evidence suggesting that members of the Mod Squad were taking amounts of marijuana that had been seized from drug dealers and diverting it for their own purposes, and that you did nothing about that. What is your recollection?
>
> Mr. Butler: My recollection was refreshed when I spoke with an Assistant District Attorney of mine, who is now in Montgomery, Alabama, Charles Graddick, to whom I had turned over the matter of that inquiry. Mr. Graddick has presented a letter to

---

[14] Tr. 86.

> this Committee, and I would like to . . . offer it for the Committee's consideration.[15]

Perhaps inadvertently, perhaps not, Mr. Butler said nothing about his own knowledge of or role in the Mod Squad matter other than that Mr. Graddick had looked into it. It is unclear what personal knowledge Butler actually had about the substance of these charges, what he told or was told by Graddick, and with whom else he may have discussed the matter.

The relevant portion of Mr. Graddick's letter is as follows:

> During the time when I served as an Assistant District Attorney . . . I became aware of an allegation regarding the "Mod Squad" . . . Mr. Butler requested that I assist in looking into the allegation. After a full analysis and investigation, I determined that there was no evidence to warrant any further action and recommended same to Mr. Butler.[16]

The letter does not explain on what basis Butler may have concluded, despite the alleged detailed evidence of the diversion of narcotics, that there was "no evidence to warrant any further action;" it is not clear on the face of Graddick's letter whether he was aware of the details of Travis' investigation. Travis testified at the June 1988 hearing that Graddick never contacted him about the Mod Squad matter. (Tr. 91). If that is true, then either Butler failed to tell Graddick of the source of and evidence supporting the allegations against the Squad, or Graddick deliberately chose to ignore that evidence, an action clearly inconsistent with Graddick's insistence that they conducted "a full analysis and investigation."

---

[15] Id. at 52-53.

[16] Letter of Charles A. Graddick, June 27, 1988.

Subsequent to its June 1988 hearing the Committee has obtained notes of a statement made during the period in question by a former member of the Mod Squad. The statement given by that officer completely corroborates Travis' investigation and testimony. The relevant part of the notes are as follows:

> 2. Drugs that are confiscated in raids are supposed to be turned in as evidence. In many cases drugs have been kept by the Mod Squad. Only a portion were turned in to Dr. Grubbs. Check warrants in Sheriffs' Office against receipts from Dr. Grubbs.
>
> 3. On one occasion a capsule containing heroin was given to an informant and the informant cooked the heroin, and shot it into his veins. This took place in George Calihans office in the basement of the court house . . . .
>
> 4. The majority of all warrants obtained by the Mod Squad are obtained by lying to the judges about positive knowledge of drugs on the premises . .
>
> 8. On many occasions, the Mod Squad will take some drugs along on raids and will use them to plant just in case they can't find any during a search . . . .
>
> 9. . . . [T]he reason drugs are held back by the squad is to have a supply on hand to use for plants, . . . and to provide informants with drugs to sell and to use themselves.[17]

There may still be in existence a film of this statement. The Committee has not heard direct sworn testimony from any of the former members of the Mod Squad, which was abolished some time ago. Because of the gravity of this information, for both Butler and possibly others, that testimony ought to be sought. If the evidence so far in hand is not rebutted, it would compel the conclusion not only that the squad members were engaged in criminal activity, but also that drug convictions obtained by the District Attorney's office may have been based on planted drugs. Such criminal activity would raise two distinct questions regarding Butler's nomination, which are discussed separately below.

---

[17] Untitled Notes, pp. 2-3.

(b) How Did the Squad Avoid Prosecution?

If the evidence now before the Committee is correct, it is difficult if not impossible to understand how "a full analysis and investigation", to use Mr. Graddick's phrase, could have failed to unearth the criminal enterprise at issue. The method of investigation used by Travis and independently suggested by the former squad member -- a systemic comparison of seizure records and records in the toxicologist's office -- would have revealed whether and to what extent narcotics were being diverted for illicit purposes by the squad. It is unclear from the present record whether such a comparison was made, just as it is unclear why Graddick never questioned Travis about the latter's investigation and evidence.

The present record suggests that either Butler or Graddick (or possibly both) may have taken actions intended to prevent Travis' investigation from resulting in prosecutions. At this juncture, untiland unless the underlying evidence regarding the drug diversion scheme is somehow rebutted, it is of critical importance to question both Graddick and Butler under oath about the role that each played in the investigation of Travis' disclosures.

(c) Who Tipped Off The Mod Squad?

Travis testified that, two days after he notified Butler about the apparent diversion of seized narcotics, Mod Squad members, and possibly others, took steps to impede further investigation of that apparent criminal scheme. The relevant portions of Travis testimony are as follows:

> I kept this pad that had nothing but this drug information on it in a locked drawer of my desk. . . . [T]he second morning [after disclosing the investigation to Butler] when I came in to work . . . my bottom drawer was open just a crack and the tongue on the lock was sticking up. . . . I went in and I immediately saw that my pad was gone. I had an index in another drawer taped to the top of my desk and I got that index out and I went through everything in the drawer by the index. There was nothing else missing except my report of the discrepancies in the drug cases. . . .
>
> I went down to toxicology . . . and I told Dr. Grubbs what had happened. . . . I went back up to my office and when I went in the Mod Squad was bringing out a half a washtub full of drugs and marijuana and that type of thing out of the big old safe that they had in the chapel. I did not ask anything, I just watched it and they took it out to the car . . . two cars . . . each one of them had a washtub full of drugs and marijuana and what have you in the back of it.
>
> Then they come in and started pulling all the narcotics files and pulling the index cards, and I said, "Whoa, now, fellows, you are in my department now." They said, "Go talk to the sheriff about it if you don't like it, he told us to get all the narcotics files." They pulled all the narcotics files, they took them in the chapel, along with the index cards and put them in the safe.[18]

If this testimony is correct, the Mod Squad had learned by the morning in question that they were under investigation for diverting drugs, and that the narcotics files were an important part of that investigation. Either the squad, or someone acting on its behalf, had also learned that Travis was involved in the investigation and had prepared a list of the discrepancies between the narcotics files and the toxicologist reports, and had stolen that list.

---

[18] Tr. 87-88.

From the record now before the Committee it is possible so far to identify only three people who at this point knew about the investigation -- Grubbs, Travis, and Butler. It does not necessarily follow, however, that Butler deliberately tipped off the squad; it is possible that after Travis' meeting with Butler a fourth individual learned of the investigation. At some point in time Butler did advise Graddick that there was an allegation against the squad, and according to Travis the squad members asserted -- perhaps truthfully, perhaps not -- that they were removing the narcotics files at the direction of the sheriff. The extent, if any, to which Butler may have been involved in the events leading to the theft of Travis' notes and the seizure of the narcotics files remains unresolved.

(d) Further Investigation

The former members of the Mod Squad are in a position to provide several types of critical information, regarding the nature of the drug diversion scheme, the scope of Graddick's investigation and the tip which led them to seize the files, to remove the narcotics from their offices, and, possibly, to remove Travis' notes. Because serious criminal activity seems to have been involved these witnesses should be questioned directly and under oath. Graddick should also be questioned about the scope of his investigation, and the nature of the information which he received from and gave to Butler. Because Graddick's earlier letter was quite vague, and because the record before the committee raises questions about potential culpability on Graddick's part, he too ought to be interrogated under oath. Butler's original statements about the Mod Squad matter were, perhaps inadvertently, uninformative. He should be carefully questioned about each phase of his activities in this matter--his meeting with Travis, his discussions with Graddick, the identity of anyone else, such as the sheriff, to whom he may have disclosed Travis' investigation. There are two reports in the Mobile Register of this era stating that the County Commission provided Butler with copies of certain unspecified written charges against the Mod Squad, and that Deputy Sheriff Larry Tillman personally met with Butler and made a statement to him about the squad. The Committee should ascertain whether the charges and statement in question were related to the drug diversion question. It appears from Travis' own statements that at the time he had only disclosed that investigation to Butler and Grubbs, but that should be confirmed on the record.

Aside from the testimony of the Mod Squad members, several other leads should be pursued to confirm the allegations regarding the diversion of drugs. First, an attempt should be made to construct the comparison of seizures and toxicology records made by Travis; Travis testified that the amount of the seizures could be ascertained from still existing "offense reports". (Tr. 88). Second, if planted drugs were indeed being used by the squad, allegations of such abuses might well be found in the criminal proceedings which resulted from the use of those planted drugs, or from attorneys who handled those cases. Third, the film of the interview with the former Mod Squad member may exist and should be sought. Because of the sensitivity of the film's contents, there is a danger that this film, if it does exist, would be destroyed if requested in an informal manner. If a serious effort is to be made to obtain the film, it would probably require the issuance of a subpoena or some other unusual measure.

III. The Evelyn Jordan Case

(a) The Handling of the Case

This case concerns the incarceration of Evelyn Jordan, who was arrested in August, 1971, and remained in jail for over seven and a half months, until mid-March, 1972, on charges of which everyone now agrees she was entirely innocent. Jordan was arrested at the end of July, 1971, for the murder of Quincey Rhoten, and was formally indicted by a state grand jury for that crime on October 6, 1971. By mid-November, 1971, the sheriff's office had obtained detailed written confessions from the actual killers, together with extensive evidence corroborating those confessions. Despite the fact that Mr. Butler was personally aware of both the confessions and the other evidence, he continued to press the charges against Jordan, and to insist that she remain in jail, for another four months.

The actual killing occurred during the course of a robbery perpetrated by two alleged prostitutes, Margaret Perry and Gloria Anglin. Perry, who fired the murder weapon, was at the time of the killing a police informant whose room, board and other expenses were being paid by the police.[19] The two detectives responsible for supervising and working with Perry were, coincidentally, the same detectives who mistakenly arrested Jordan for the murder, and had who obtained what proved to be the inaccurate statement of the only witness implicating Jordan. Shortly after Jordan's arrest in the summer of 1971, law enforcement officials began to receive evidence indicating that they were holding the wrong woman.[20] In mid-September Perry made a statement to then Deputy Sheriff Travis that she had witnessed the killing, and that the killer was Gloria Anglin.[21] In early October, after Perry had been arrested on other charges, she reiterated to Travis her statement that Anglin was the killer, but also included in her statement such detailed information about the contents of the car in which Rhoten was killed as to make clear that Perry had been in the car and not, as she claimed, observing from across the street.[22] On October 13,

---

[19] Habeas Corpus Tr., pp. 18,21,72,73,85.

[20] Id. at 14.

[21] Id. at 14-15.

[22] Id. at 16.

Perry, who had become aware of the arrest of Jordan for the Rhoten killing, sent to Travis from her cell a written statement insisting that Perry had personally witnessed the crime, and that Jordan was not involved.[23] Travis brought these statements to the attention of the two officers who had arrested Jordan, and they in turn questioned Perry, expressing annoyance that she had disclosed Anglin's role in the killing to Travis rather than to them.[24] Anglin, who for some time had been in Chicago, returned to Mobile and was arrested at the end of October, and deliberately kept in a cell by herself from which she could not contact Perry. On October 30 Anglin made a detailed written confession, admitting taking part in the robbery of Rhoten, and identifying Perry as having fired the murder weapon.[25] Perry made a similar written confession the next day.[26] In response to repeated questions from Travis, both Perry and Anglin insisted that Jordan had no connection with the murder; Perry asserted that she did not even know Jordan.[27] Within the following two weeks extensive evidence corroborating the Perry and Anglin confessions was obtained by law enforcement officials.

---

[23] Id. at 17. The note read in part:

> "They have a lady up here for murder, but she had nothing to do with it. She wasn't nowhere around when the incident took place . . . I was there when it happened ... My conscious [sic] was bothering me. I can't stand to see someone punished for something they didn't do. Evelyn Jordan is innocent. I will tell you everything. . . ."

[24] Id. at 17-18.

[25] Id. at 19-31.

[26] Id. at 31-39.

[27] Id. at 39.

There appears to be no basis for questioning the conduct of Butler during the period from the arrest of Jordan in August until the Perry and Anglin confessions, and corroborating evidence, became known in early November. The central issue is why Butler insisted on pressing the charges against Jordan, kept Jordan in jail and refused to file murder charges against Perry and Anglin, for the four months from early November 1971 until mid-March 1972.

It is clear that Butler's action was not the result of mere ignorance, oversight or negligence. The details of the Anglin and Perry confessions, together with all but one piece of the corroborative evidence, were disclosed at a habeas corpus hearing on November 19, 1971, at which Butler personally represented the prosecution.[28] The remaining evidence, the blood stained clothes of Perry and Anglin, was obtained by law enforcement officials at the time of the confessions and brought to Butler's attention,[29] although it appears that Jordan's attorney was unaware at the time of the habeas corpus hearing that these clothes had been found. All the evidence which ultimately led to the prosecution of Perry and Anglin, and to the release of Jordan, was personally known to Butler in mid-November, 1971, four months before Butler finally agreed to drop the charges against Jordan. Mr. Butler has provided the Committee with several explanations for his conduct after mid-November 1971.

---

[28] Habeas Corpus transcript, passim.

[29] June 29, 1988 hearing, pp. 77-78.

First, Butler asserts "I was opposed to the case against Evelyn Jordan being dismissed on a motion to dismiss or quash the indictment without a full and complete evidentiary hearing".[30] What actually occurred in 1971 seems to be precisely the opposite. On November 5 Jordan's lawyer filed a motion to dismiss or quash the indictment, and the state judge set the matter for a hearing on November 10.[31] On November 9, in what proved a successful effort to prevent any evidentiary hearing on the motion to dismiss, Butler filed a demurrer arguing that as a matter of law Jordan was not entitled to a hearing on her assertions that she had been indicted on the basis of perjured testimony and that Perry had confessed to the very crime with which Jordan had been charged.[32] The press account of Butler's action correctly described it in just those terms: "The district attorney Tuesday gave notice that he would attempt to block testimony at a scheduled 9:30 a.m. Wednesday Mobile Circuit Court hearing on a motion to quash the first-degree murder indictment against Evelyn Jordan."[33] On November 10 Jordan's attorney advised the court that he had more than 30 witnesses ready to testify in support of the motion to dismiss, but Butler pressed his argument against any such evidentiary hearing, and the judge refused to permit the witnesses to testify. On November 19 the judge agreed with Butler's position that Jordan was not entitled to any hearing on her motion to dismiss the indictment, and denied that motion without ever having listened to a single witness or having admitted any evidence.[34]

---

[30] Answers to Additional Questions, July 19, 1988, pp. 1-2.

[31] Evelyn Jordan Docket Sheet.

[32] Demurrer to Motion to Quash. This pleading was signed by Butler personally.

[33] Mobile Register, November 10, 1971, p. D1 (emphasis added).

While the motion to dismiss was still pending, Jordan's lawyer, anticipating that he might be denied any opportunity to present evidence in support of that motion, initiated an alternative step, filing on November 16, a petition for a writ of habeas corpus. A habeas corpus proceeding, however, could not be used to litigate directly Jordan's guilt or innocence, but focused solely on whether her incarceration pending trial was unconstitutional. For that reason, the central claim of the petition, and the ultimate issue which it raised, was Jordan's assertion that the actual reason she was being held in jail was to minimize political embarrassment to the police officials who had improperly arrested her in the first instance:

> I am . . . held in the Mobile County Jail ... for the purpose of protecting from public embarrassment, public officials of the City and County of Mobile, Alabama. The investigation of my case has been so mishandled by the Mobile City Police that I can only believe that I am being held to prevent these facts from becoming publically known. . . . I . . .believe that the District Attorney . . . is trying to prevent Commissioner Doyle and Captain Riddle from being embarrassed for

---

[34] Habeas Corpus Transcript, pp. 3-7.

> having arrested the wrong person for the murder of L. Quincy Rhoten.[35]

Butler's Answer to the petition simply averred that Jordan was being held pursuant to a grand jury indictment, and did not make any claim regarding the sufficiency or insufficiency of the evidence against her.[36] At the Habeas Corpus proceeding itself Butler offered only three documents, the arrest warrant for and indictment of Jordan, and the resulting incarceration record, and declined to call any witnesses. At the end of the hearing the judge ruled that Jordan's evidence was not "sufficient to prove" "the allegations of the petition"[37]; the central allegation of the petition was that Jordan was being held solely to protect the police from embarrassment, and the judge's one sentence opinion makes no reference to the merits of the criminal charges against Jordan herself. At the June hearing Mr. Butler described the result of the habeas corpus hearing as follows:

> [The evidence] that other people had committed this crime . . . was tested before a Circuit Judge, the weight and credibility of that evidence on Ms. Jordan's petition for a writ of habeas corpus. Judge Hubert Robertson did not think the new evidence was credible enough to conclude that she Evelyn Jordan was not in fact guilty, so he denied the petition for habeas corpus.[38]

In fact Judge Robertson was not called upon and did not purport to express any view as to whether or not Jordan was innocent, or as to the weight and credibility of the Perry and Anglin confessions and the corroborative evidence. Under Alabama law a judge in a habeas corpus proceeding has no authority to free the person in custody merely because the judge may be convinced that person is entirely innocent; relief is available only if there has been a fatal procedural defect in the underlying warrant or indictment, such as a lack of jurisdiction on the part of the grand jury or court which issued it. Code of Alabama §15-21-24.

---

[35] Habeas Corpus Record, second unnumbered page; Habeas Corpus Petition, p.1.

[36] Habeas Corpus Record, sixth unnumbered page.

[37] Habeas Corpus transcript, p. 190.

[38] June 1988 transcript, p. 49.

Mr. Butler also suggested to the Committee that he had insisted in pressing charges against Jordan after November 1971, because he believed "that merely because someone confesses to a crime doesn't necessarily exonerate another accused."[39] It is certainly true that a generalized confession from Perry or Anglin would not have compelled the conclusion that Jordan was innocent; it is not unknown for individuals to confess to crimes they did not commit, simply to obtain publicity or to assuage some psychological urging to be punished. But -- as Butler well knew in November, 1971 -- this is not a case of such a generalized, possibly inaccurate confession. First, the confessions of both Perry and Anglin both contained a detailed description of the inside of the car where Rhoten was shot, of Rhoten's wounds, and of other facts which the investigating officer and state toxicologist agreed would only have been known to the actual killers.[40] Second, although Perry and Anglin had been unable to contact one another for several weeks prior to the confessions, their confessions contained essentially similar details of the events leading to and following the killing.[41] Third, Anglin's sister testified that shortly after the killing Anglin had confessed that she and Perry were the perpetrators.[42] Fourth, Perry's fingerprints, but not Jordan's, were found inside the car in which the killing occurred.[43] Fifth, Perry and Anglin were each able, separately, to direct the police to the very spot at which the car was parked when Rhoten was killed. All of this evidence was introduced by Jordan's counsel at the November 19 habeas corpus hearing, and none of it was challenged by Butler. Under these circumstances there simply could be no doubt that Perry and Anglin had killed Rhoten; Perry and Anglin insisted Jordan was not involved, Perry insisted she did not even know Jordan,[44] and Broadway, the alleged eye witness, insisted that there were only two women next to the car when the shooting occurred.[45]

---

[39] Answers to Additional Questions, July 19, 1988, p. 2; see also id. at 3 ("the letter of the law . . . that a confession does not necessarily exonerate another accused.").

Mr. Butler also stated by way of explanation that "I . . .

---

[40] Habeas Corpus transcript, pp. 16,17,25,27-28,50,54-63,161-62.

[41] Id. at 19-20, 54-63.

[42] Id. at 103 et seq.

[43] Id. at 5,70,89-90,97-98.

[44] Id. at 40-45.

[45] Id. at 134-38.

caused her [Jordan] to be freed as soon as the Mobile County Grand Jury indicted the other two women."[46] But as district attorney Butler himself was in control of when the evidence against Perry and Anglin was presented to the grand jury.

The evidence now before the Committee, particularly the habeas corpus transcript, demonstrates that by mid-November there was overwhelming evidence that Perry and Anglin, rather than Jordan, had killed Rhoten, and that Butler was personally aware of that evidence. Butler has failed as of yet to offer a persuasive explanation as to why he persisted in pressing charges against Jordan, and thus in keeping her incarcerated, for four months thereafter. The evidence suggests, at the least, a willful indifference to the continued incarceration of a demonstrably innocent defendant. It would be a serious matter if, acting for no reason whatever, Butler had decided to let Jordan languish in jail for four months. But while no adequate explanation has been offered for Butler's action, it is difficult to believe that Butler indeed acted in this way without any purpose at all. Why Butler chose to do so remains, on the present record, entirely unclear. Jordan alleged in her habeas corpus petition that Butler was trying to protect the police from the embarrassment of having to admit that they had arrested the wrong person. At the June hearing Travis asserted that Butler had expressed indifference to Jordan's date because she was black[47]; Butler denies having made such a statement.[48]

---

[46] Answers to Additional Questions, July 19, 1988, p.3.

[47] June 1988 transcript, p.078.

Further inquiry into Butler's motives seems imperative because of another, equally perplexing, circumstance -- a number of other individuals in Mobile appear to have been adamantly opposed to discontinuing the case against Jordan, or to prosecuting Perry and Anglin. First, Margaret Perry was threatened with being killed unless she retracted her own confession of guilt; one individual was arrested for conveying such a threat, and other threats were apparently made as well.[49] The ultimate source of those threats, whoever it may have been, evidently had a vital interest at stake, and was prepared to resort to criminal conduct to protect it. Second, the two officers who had arrested Jordan, and were directly responsible for the case against her, seem to have been adamantly opposed either to checking the accuracy of Broadway's accusations, or to corroborating the confessions of Perry and Anglin. Their conduct is set out in detail in the habeas corpus transcript.[50] Most strikingly, despite the fact that Perry and Anglin had told authorities the location of the murder weapon, Officer Bell insisted that their signed confessions were insufficient to obtain a search warrant; instead of doing so Bell simply asked an occupant of the house involved whether he had the weapon, and left upon receiving a negative answer, a course of action well

---

[48] Letter of Charles Butler to Senator Leahy, June 30, 1988, p.1.

[49] Undated Mobile Register story.

[50] Habeas Corpus transcript, pp. 74-92.

calculated to assure that the gun was moved or disposed of.[51] It remains unclear why Broadway gave a statement to the police asserting that he had seen Jordan, rather than Perry and Anglin at the car in which Rhoten was killed.

(b) Further Investigation

There are a number of additional items which would throw further light on this matter:

(a) The records of related criminal proceedings, those against Perry, Anglin, and Anthony Robinson, the individual arrested for threatening Perry.

(b) The transcript of the September 8-9 preliminary hearing in the Jordan case.

(c) Whatever records or notes Jordan's lawyer may have that the Committee itself has not already obtained from another source.

(d) A clearer copy of the Jordan docket sheet -- on the copy provided to the Committee a possibly important entry, between November 1971 and March 1972, is illegible.

(e) Any additional records or briefs in the habeas corpus appeal ultimately dismissed as moot.

There are also a number of individuals with personal knowledge of these events who ought to be interviewed and, if they have relevant information or are unresponsive, asked to testify

---

[51] Id. at 83,92; for other testimony regarding the murder weapon, see id. at 115,122,124.

(i) Anthony Robinson

(ii) Virgil Broadway

(iii) The officers involved in obtaining Broadway's statement and handling the case against Jordan: Hubert Bell, Walter Pickett, and Douglas Jones

(iv) Gordon York, described by Perry as an accessory after the fact to the Rhoten killing.

IV. The Ex Parte Board of Equalization Proceeding

This problem arose out of efforts on the part of a group of individuals, including and represented by Mr. Butler (the "Butler group"), to reacquire or "redeem" certain land that had been seized for non-payment of taxes. The property in question had been seized by local authorities in 1980. In 1986 the property was bought from the state by Coastal Inter-City Health Services, which subsequently sold its interests to a group of individuals including Michael Langan ("the Langan group".) Under Alabama law former owners such as the Butler group are entitled to redeem such land by bringing a civil proceeding and paying an appropriate amount into the court; once that occurs the former owners reacquire title to the land. In 1986 such a suit was brought by the Butler group against the Langan group. Altmayer v. Langan, Civil Action No. CV-86-2490.

The Butler and Langan groups have always agreed that the Butler group is entitled to redeem the property; the controversy between them has concerned how much the Butler group will have to pay to redeem the land, and what portion of that payment will ultimately go to the Langan group. On March 30, 1986, the trial judge in Altmayer v. Langan held that the amount which the Butler group had to pay was the total of all back taxes on the land, the interest on the back taxes, and the amount which the Langan group had paid to buy the land from the state. The judge ruled that the Langan group would receive of this total only the amount which it had paid to the state to acquire the land, and that the tax collector would receive the balance. The Langan group appealed, claiming that it was entitled to receive the back taxes as well; that appeal has not yet been decided.

While this appeal was pending, Butler initiated on behalf of the Butler group an effort to obtain from the Mobile Board of Equalization an order reducing retroactively the amount of the back taxes owed on the property for the years 1979-87. Although the Langan group was and is still claiming that it is entitled to receive those back taxes, Butler deliberately chose to withhold from the Langan group and their attorney any notice of or information concerning this request to the Board. The Board proceeding consisted of two written requests by Butler, together with supporting materials, and two Board responses mailed to Butler; Butler neither served copies of these documents on counsel for the Langan group nor told him that the proceeding was underway.

Butler's first letter to the Board, dated April 21, 1987, described the lower court decision in Altmayer v. Langan that the state, rather than the Langan group, was to receive the back taxes, but made no mention of that fact that that order was under appeal. The tone of Butler's letter was such as might well have led the Board to believe that the decision was final, and that persons from who redemption had been sought would thus have no interest in the disposition of Butler's request. The letter asserts, for example, "the Tax Collector will be able to collect taxes on property for the benefit of the State and County,"[52] whereas whether or not the tax collector will be able to collect the taxes will turn on the outcome of the still pending appeal. The Board might also have been confused by the manner in which the letter was signed:

> Hamilton, Butler, Riddick, Tarlton,
> & Sullivan, P.C.
> (signature of Mr. Butler)
> Charles R. Butler, Jr.
> Attorney for Owners[53]

In fact, of course, the owners were the Langan group, not the Butler group. Both of the letters which the Board mailed to Butler in response were addressed as follows:

> Coastal Inter-City Health Services, Inc.
> c/o Charles R. Butler, Jr.
> P.O.Box 1743
> Mobile, AL. 36633

The salutation in both of the Board's letters read "Dear Property Owner". Butler deliberately did not forward copies of these letters to either Coastal or the property owner, the Langan group, and did not notify either of the existence of the letters.

---

[52] Letter of Charles Butler to Mobile County Board of Equalization, April 21, 1987, p. 2 (emphasis added).

[53] Id. at 3 (emphasis added).

The fact that the Langan group was never notified of the tax reduction request assured that the Langan group would not be in a position to offer the Board evidence or legal arguments that might persuade it to deny the requested reduction. There was, and remains, a serious legal issue as to whether Alabama law authorizes the Board to order a retroactive tax reduction in a situation such as this, a matter which counsel for the Langan group has discussed at length in correspondence to the Committee.[54] Whatever the merits of the Langan arguments, Butler's actions assured that the Board never heard them. Second, Butler's request for a retroactive tax reduction was based on his assertion that, because the land had been seized for non-payment of taxes in 1980, the Butler group was never notified of assessments for that or subsequent years, and thus had never had an opportunity to protest them:

> The problem, as you can see . . . [is] [t]he amount of delinquent taxes and interest [claimed in the redemption suit] amount to $27,322.31, which is based on assessments made on the property for years during which the taxpayers were unaware of such assessments and therefore unable to protest. . . . [F]rom 1980 forward the title was in the State by virtue of the 1980 tax sale and none of the taxpayers were notified until 1986 when Langan's group bought the property from the State and attempted to collect the $27,322.31 from them.[55]

This assertion regarding the lack of notice for the prior years in question seems central to Butler's claim for retroactive relief. However, when counsel for the Langan group finally learned of the tax reduction request, he was able to demonstrate that the assertion was, at least in part, incorrect, adducing copies of protests filed for both 1980 and 1981 by members or predecessors in interest of the Butler group, protests which necessarily demonstrated that the Butler group had had notice of the assessments for those years.[56] Because the Butler group or its predecessors did have notice of and in fact protested the 1980 and 1981 assessments, any lack of notice for 1982-86 may have been less significant, since both Butler and the Board proceeded on the common premise that the value of the land had not changed during the 1980-86 period.[57] One cannot, of course, be sure how much the Board's reassessment might have been affected by arguments based on the fact that protests had indeed been filed in 1980 and 1981, but by not notifying the Langan group of the Board proceeding Butler assured that it would not be in a position to make those arguments, or to point out those facts, to the Board.

---

[54] Letter of Michael D. Langan to Andrew Rainer, August 12, 1988.

[55] Letter of Charles Butler to Mobile County Board of Equalization, April 21, 1987, p. 2.

On June 30, 1987, the Board issued its decision reducing by about half the back taxes owed on the land in question. Although some form of reconsideration and judicial review of this action would evidently have been possible at that time, Butler did not notify the Langan group or its attorney of the Board's decision. The attorney for the Langan group did not learn of the Board's actions, and of the proceedings which led to them, until late October, 1987. On November 25, 1987, counsel for the Langan group notified Butler that he intended to bring suit to overturn the Board's decision. In response Butler argued that any such suit would be premature, and proposed that the filing of the complaint be postponed until after the decision of the Alabama Supreme Court in Altmayer v. Langan:

---

[56] Complain for Declaratory Relief, Langan v. Altmayer, Exhibit G, pp. 1,2.

[57] Butler requested that the market value of the property be set at the same level, $172,882, for each of the years in question. Letter of Charles Butler to Mobile County Board of Equalization, April 21, 1987, p. 2. The Board fixed the value at $200,020 for each year from 1980 through 1987, inclusive. Letter of August Argiro to Coastal Inter-City Health SErvices, Inc., June 30, 1987, pp. 1-3.

> It would seem to me that with the appeal being heard as quickly as it is before the Supreme Court, that the best course of action for you to follow would be to withhold filing the suit until the Supreme Court rules. We feel that this is a reasonable course of action for you to take and would have to assume that if you take any other course of action that it would be for an improper purpose and create only unnecessary and needless litigation.[58]

Counsel for the Langan group initially agreed to Butler's request that he postpone the suit over the tax reduction.[59] In the spring of 1988, when it became clear that a prompt appellate decision would not be forthcoming, the Langan group filed suit to overturn the tax reduction.[60] Although the Langan group had delayed filing that suit at Butler's personal suggestion, and although the suit was filed earlier than the point in time which Butler had argued would be proper, Butler responded by moving to dismiss the complaint on the ground that it had been filed too late, asserting that "[t]he action is barred by the applicable statute of limitations."[61]

---

[58] Letter of Charles Butler to Michael Langan, November 30, 1987, pp. 1-2.

[59] Letter of Michael Langan to Charles Butler, December 1, 1987.

[60] Langan v. Altmayer, No. CV-88-001978-Z.

(a) The "Nullity" Explanation

Although Mr. Butler has offered a variety of explanations for his conduct in this matter, the most important was contained in a written statement submitted to the Committee on July 19,1988:

> If the lower court decision [in Altmayer v. Langan] is reversed, the action of the Board of Equalization will have been a nullity and the taxes will stand as they were before they were lowered and the defendants will be able to require payment of them to effectuate redemption.[62]

If this was in fact the basis of Butler's actions, there would be little ground for criticism; if Butler correctly believed throughout the period in question that the action of the Board of Equalization would be a "nullity" if Altmayer v. Langan were reversed, and could not affect the amount of back taxes due to the Langan group if they were held entitled to those taxes, then there would have been little need to notify the Langan group about a Board of Equalization proceeding that would not affect them financially no matter what occurred in Altmayer. On the other hand, if during the period involved Butler had no such understanding, then the ethical issues described below would arise; equally importantly, if Butler had no such understanding during the 17 months in question, then his July 19,1988 statement would raise serious questions as to the candor of his representation to the Committee.

---

[61] Motion to Dismiss, Langan v. Altmayer.

[62] Answers to Additional Questions, July 19, 1988, p. 6.

The materials so far before the Committee suggest that throughout the actual dispute with the Langan group it was Butler's understanding, and intent, that the result of the ex parte proceeding before the Board of Equalization would be binding on the Langan group, and would reduce the amount to which they were entitled from the Butler group in the event that Altmayer v. Langan was reversed. The dispute about the Board proceeding first arose on October 21, 1987, when counsel for the Langan group wrote an angry letter to the Board, with a copy to Butler, complaining about and seeking reversal of the reduction in the back taxes owed on the land.[63] Clearly counsel for the Langan group was interested in, and angered by, the Board's action because he assumed it affected how much his clients would receive in back taxes if they prevailed in the Alabama Supreme Court. If Butler, as counsel for the Butler group, had believe the Board's action would be a nullity should Altmayer be reversed, he would surely have said so, since that would in all likelihood have ended the entire dispute; Butler, however, offered the Langan group no such assurance. On November 25,

---

[63] Letter of Michael Langan to Mobile County Board of Equalization, October 21, 1987.

1987, counsel for the Langan group sent to Butler a draft Complaint, ultimately filed in the spring of 1988, which squarely asserted their understanding that the Board's reduction in back taxes would be binding on them in the event of a reversal in Altmayer:

> 17. Plaintiffs further contend that the June 30, 1987 ruling of the Defendants Board et al. in actual effect takes the property of Plaintiffs by force of law without notice.
>
> 18. Plaintiffs say and show that they, as the assignee of the State, are entitled to collect the price of the redemption from Defendants Altmayer et al. (the former owners of said property), should Defendants Altmayer et al. redeem the property; further, that the June 30 ruling of the Defendants Board et al. adversely affects Plaintiffs by reducing the redemption price to which Plaintiffs were entitled prior to said ruling.[64]

Had Butler then believed that a reversal in Altmayer would render the tax reduction a nullity, he would surely have said so, assuring the Langan group that there was absolutely no need for them to litigate the tax reduction since it would automatically be rescinded if Altmayer were reversed. Instead, in the passage quoted earlier, Butler insisted that the proposed suit was premature, and that there would be no reason for the Langan group to litigate the validity of the tax reduction until and unless Altmayer were reversed.

After the Langan group actually filed their complaint, Butler could, by stipulating that the tax reduction would be a nullity as against them, have rendered proceedings on the merits largely unnecessary; instead, Butler filed a motion seeking a dismissal of the Langan complaint on the merits.[65] On July 19, 1988, Butler asserted in his answers to the Committee that the tax reduction would be a nullity if Altmayer were overturned. Fourteen days later, in a motion responding to the Langan challenge to the tax reduction, Butler seemed to assert precisely the opposite, arguing that a reversal in Altmayer, and only a reversal in Altmayer, would make it necessary to decide the legality of the tax reduction:

---

[64] Complaint for Declaratory Judgment, pp. 4-5.

> 4. The appeal is presently pending before the Supreme Court.
>
> 5. If the Supreme Court reverses Judge Kendall's Order then the merits of the original matter will be relitigated before Judge Kendall and the Matters raised in this Declaratory Judgment action will be germaine [sic] to and part of the relitigated case before Judge Kendall.
>
> 6. If the Supreme Court affirms Judge Kendall's Orders, then the Declaratory Judgment Action will be moot.[66]

If, as Butler insisted in his statement to the Committee, a reversal in Altmayer would ipso facto nullify the tax reduction, then in the wake of such a reversal the merits of the Langan complaint challenging that reduction to would neither be germane to nor litigated in Altmayer, they would be moot.

In short, it appears from the record before the Committee that throughout the last year Butler contemplated that the ex parte tax reduction would in fact bind the Langan group. This is not, however, a situation in which, hoping to win Senate confirmation, Butler has reversed his position and abandoned in the civil litigation any right to rely on the tax reduction as binding on the Langan group. Rather, what now seems to be occurring is that Butler is simultaneously insisting in the Alabama litigation that the tax reduction will affect the rights of the Langan group, while asserting in his communication with he Committee that he never intended or understood the tax reduction to have any such impact.

---

[65] Motion to Dismiss, Langan v. Altmayer.

[66] Motion to transfer to Judge Kendall's Docket, Langan v. Altmayer.

(b) The Supersedeas Bond Explanation

Mr. Butler has advised the Committee that at the time he requested the tax reduction he fully intended to notify the Langan group, so long as their counsel filed a supersedeas bond to stay the lower court ruling in Altmayer:

> Had the supersedeas bond been filed, we would have immediately notified the defendants of our action because the ruling of Judge Kendall would have been stayed by their election to file the supersedeas bond. . . . It was not my clients', nor my, intention to deny the defendants any of their rights as they clearly had an option to exercise their right to stay Judge Kendall's action by filing a supersedeas bond and they did not.[67]

This explanation of Butler's conduct in the spring of 1987 is not easy to credit. The sole legal significance of a supersedeas bond is to stay the execution of a judgment under appeal. Rule 8(a), Alabama Rules of Appellate Procedure, provides:

> (a) Stay by Supersedeas Bond. The appellant shall not be entitled to a stay of execution of judgment pending appeal . . . unless he executes bond . . . payable to

---

[67] Answers to Additional Questions, July 19, 1988, pp. 5-6.

> the appellee . . . with condition, failing the appeal, to satisfy such judgment as the appellate court may render . . . .

Butler insists that, had the lower court judgment in Altmayer been stayed as a result of a supersedeas bond, he would "immediately" have notified the Langan group of the tax reduction request made in his April 21,1987 letter to the Board.

The difficulty with this explanation is that on April 21, 1987, when that letter was sent to the Board, the judgment in Altmayer v. Langan was stayed. Rule 62(a) of the Alabama Rules of Civil Procedure provides:

> (a) Automatic Stay . . . [E]xcept by order of the court for good cause shown, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry.

The effect of a Rule 62(a) automatic stay is identical to a Rule 8 supersedeas bond stay. Since the lower court decision in Altmayer was issued on March 30, 1987, the automatic Rule 62(a) was in effect at the time of the April 21 letter, and for more than a week thereafter. On April 21, 1987, when Butler wrote to the Board and made the critical decision not to send a copy of his letter to counsel for the Langan group, the operation of the March 30 decision was stayed just as it would have been under a supersedeas bond. Butler's reference to the absence of a supersedeas bond simply cannot account for his refusal to provide the Langan group with notice of actions which he took during the period when the automatic Rule 62(a) stay was in effect.

(c) The Ethical Issue

The ethical and constitutional principles involved in this matter go to the very heart of the American legal system--they concern the right of any person to notice and an opportunity to be heard in connection with a governmental proceeding that may significantly affect his or her interests. If a lawyer had brought a lawsuit for $10,000 against the Langan group, but had deliberately refused to notify the Langan group or its attorney of the proceeding, had never sent them any of the documents he filed in support of his claim, and did not tell them of the resulting decision until the time for appeal had run, the issue raised by such behavior would not be whether he should become a federal judge, but whether he should be permitted to remain a member of the bar. The question raised by the record before the Committee is whether Mr. Butler's own actions are somehow distinguishable from such deliberate misconduct.

Mr. Butler did not withhold notice in this matter out of an altruistic desire to somehow confer a procedural or tactical advantage on the Langan group; Butler wanted to withhold notification because his own client was more likely to prevail in the Board proceeding if that proceeding were conducted in an ex parte manner. Butler does not claim that he innocently assumed that the Langan group and their counsel would not care about the tax reduction proceeding, or would be indifferent to the more than $10,000 they might lose if Butler's request was granted. Butler knew full well that the Langan group would want to be notified about the tax reduction request, and that it would certainly oppose that request once the group learned about it. Butler wanted to keep the Langan group in the dark about the Board proceeding precisely because he did not want the Board to hear whatever legal or factual arguments the Langan group would make in opposition to the requested tax reduction.

Butler was entitled to keep the Langan group in the dark if the Board's actions could not significantly affect their financial interests. But the purpose of the proceeding before the Board was to reduce by more than $10,000 the amount which the Butler group will have to pay to redeem the property in question. Until the Alabama Supreme Court decides Altmayer, we will not know whether the roughly $10,000 reduction which Butler obtained from the Board will come out of the pockets of the Langan group, or from that of the tax collector. If Altmayer is overturned on appeal, the proceeding before the Board will turn out to have been, in effect, a proceeding by the Butler group against the Langan group--albeit a proceeding in which only the Butler group was able to participate.

It is a fair measure of the character of the nominee that Mr. Butler professes to see no ethical issues raised by a maneuver whose purpose and effect was to obtain an ex parte order reducing by $10,000 the amount to which the Langan group will be entitled if Altmayer is reversed. At the June 1988 hearing, before he had devised the "nullity" explanation, Butler insisted he had done no wrong because he believed he had found a loophole in state law that permitted him to seek and obtain what may amount to a $10,000 judgement against the Langan group without having to notify them about the proceeding. Judge Frankel and counsel for the Langan group argue persuasively that no such loophole exists; certainly a state statute which did expressly authorize ex parte proceedings of this sort would run afoul of the due process clause. But, more fundamentally, any responsible lawyer would have understood that in a situation such as this he had an inherent ethical obligation to notify the opposing party, regardless of whether the same requirement was or was not also imposed by state law.

NAACP Legal Defense and
Educational Fund, Inc.

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX [illegible]
MOBILE, ALABAMA
[illegible]
TELEPHONE (205) [illegible]

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III
RICHARD E. [illegible]

PETER HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
J. GAILLARD HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
CHARLES R. BUTLER ([illegible])

CABLE ADDRESS: [illegible]
TELEX: [illegible]
TELECOPIER (205) [illegible]

September 30, 1988

Senator Storm Thurmond
United States Senate
Committee on the Judiciary
Washington D.C. 20510

Attn: Mr. Duke Short

Re: Charles R. Butler, Jr. Nomination

Dear Senator Thurmond:

I have read the 47 page document and three page fact sheet which I understand has been prepared by the Alliance for Justice, Judicial Selection Project regarding my nomination.

Addressing the questions raised as they appear as summarized in the three page fact sheet, first The Evelyn Jordan Case. I categorically deny having made the statement about Evelyn Jordan remaining in jail attributed to me by Bill Travis in his testimony (TR. p. 78) or any other racially insensitive statement. Such a suggestion also fails to take into account my nearly two years as an assistant public defender in Mobile, defending indigent accused most of whom were incarcerated in the Mobile County jail because of their financial inability to make bond, my efforts as District Attorney to streamline the grand jury process so that indigent accused who could not afford bail were not held for inordinate lengths of time prior to the disposition of their cases, and the fact that I have received the endorsement of the only black state Circuit Court Judge in Mobile County, Judge Cain Kennedy, the endorsement of the black mayor of the second largest municipality in the southern district of Alabama, Mayor John Smith of Prichard, and numerous other civic and personal endorsements from minority groups. Although I have not seen the FBI background investigation that was conducted in my case, I assume that it will confirm that any suggestion of racial insensitivity that appears from the testimony of Bill Travis is wholly without merit.

Second, The Barbara Wright Case. Although this matter has been fully investigated and answers to written questions given to the Senate Judiciary Committee as well as substantial additional documentation obtained, I would add that the suggestion of any "cover up" surely cannot meet the test of time and the scrutiny since 1971 of two Alabama Attorney Generals, three United States Attorneys for the Southern District of Alabama, two District Attorneys for Mobile County, and numerous police, sheriffs, FBI and other law enforcement personnel. Had these allegations merited the type of investigation that the Alliance for Justice is suggesting, it surely would have disclosed any alleged impropriety by now.

Third, The Mod Squad. The Alliance's findings regarding the Mod Squad are subject to the same comment about the Barbara Wright case. In addition as the Committee knows from exhibits submitted and additional evidence gathered already, the alleged "statement made during the period in question by a former member of the Mod Squad", beginning on page 16 of the Alliance's summary, was the basis of a civil suit by the members of the Mod Squad, against a local news station claiming that the Mod Squad had been slandered for repeating these same allegations. This case was settled out of court by the news station.

Finally, The Back Taxes (Altmayer v. Langan matter). As supplemental evidence furnished to the Committee has shown, a learned real estate and ethics lawyer and professor in the State of Alabama, Professor Harry Cohen, has determined that my conduct in the Altmayer-Langan proceedings did not violate any ethical considerations.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
aen

Senator **Heflin**. The committee will come to order.

Mr. Forester, if you would come forward. If you will raise your right hand: Do you solemnly swear that the testimony that you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Forester**. Yes, sir.

TESTIMONY OF KARL S. FORESTER, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY

Senator **Heflin**. Every lawyer has a professional obligation to devote some time to serving the disadvantaged. Your response to the committee questions on this topic require some clarification.

You mentioned that your firm had been involved in providing free legal advice to victims of a devastating flood in Harlan County, Kentucky, in 1977, and that your firm had represented people who had been sued by the Federal Government for recovery of overpayment of Federal benefits such as social security.

Have you personally been involved in rendering these services to disadvantaged people?

Mr. **Forester**. Yes, sir.

Senator **Heflin**. Your questionnaire response also states that you have represented individuals who were otherwise unable to pay in matters involving creditors' rights and domestic relations. Our questions ask you to specify the amount of time that you have devoted to pro bono representation. Can you estimate the amount of professional time that you have devoted to these endeavors?

Mr. **Forester**. Over a period of almost 22 years now, it would not be possible for me to estimate the time. However, it would be substantial and it continues to be substantial. Every week, people come to see me whom I see and advise and do not charge because they are unable to pay, and a lot of them are people who have been with me since I started in a small town.

I did want to mention that I left out of the questionnaire that I remember back several years ago when the Secretary of Health and Human Services checked into disability cases and reviewed those cases and terminated a lot of people who were receiving disability and social security benefits. Anyone we had ever represented in the past in social security matters came to see us when they were terminated, and we did an awful lot of that for very little compensation. Most cases were not compensated at all, but I do not know of any one that we ever lost. We were always successful in securing the benefits.

Senator **Heflin**. Well, in those cases you can submit a fee request to the administrative law judge. Is that the type of case that you are——

Mr. **Forester**. In many instances, there was no back pay coming, because the benefits were—when they first reviewing those claims, the benefits were terminated initially, then after there was such a hue and cry about it that they stopped terminating the benefits and had a hearing, so most of these people were already receiving—the benefits were never terminated, but they did have to go through the hearing process, so consequently I do not believe we ever submitted a fee petition in that type of situation.

Senator **Heflin**. You know, pro bono has got different interpretations. I know when I was back practicing law, I at one time looked and counted up the number of deeds that I had written for churches, and I probably was the greatest church deed writer in America at the time. I would organize them and get them trusts and everything else. I never got a dime from it, but the Good Lord maybe will reward me in the hereafter. [Laughter.]

Mr. **Forester**. Sometimes the archbishop is a good client but the little church around the corner does not pay too well.

Senator **Heflin**. Eastern Kentucky has been the site of some bitter labor-management disputes, particularly in the coal industry. At one point in your career, you represented the Coal Workers Union, but for the past 10 or 12 years you have represented coal mines in labor matters, among other things. It seems that you have managed to maintain the respect of the parties on both sides of the labor-management divide.

The committee has received a copy of a letter from the President of the Mine Workers District, in Middlesboro, Kentucky, supporting your nomination. How have you managed to garner support from both of these camps, which are sometimes at each other's throats?

Mr. **Forester**. Well, you treat each side with respect and dignity and in a professional manner, and sometimes it is difficult not to make people mad, but if you treat them right you do not normally have problems.

Senator **Heflin**. I believe doctors call it bedside manner. I do not know what a lawyer calls it. Is it courtside?

Mr. **Forester**. Courtside.

Senator **Heflin**. You have extensive and varied experience as a trial lawyer, from your description of some of the cases in which you have been involved and they have raised some questions to which I would like to ask your response.

In the case of *Woolum* v. *Eastover Mining Company*, you represented the mining company that was apparently responsible for a landslide of coal refuse which buried the plaintiff's house, killing her. The trial dealt solely with the issue of punitive damages. The plaintiff's lawyer offered to settle for $600,000, and you and your co-counsel tried to get authority for the insurer to settle the case, but were unsuccessful and the case proceeded to trial. The jury was out for 20 minutes and brought in a verdict against your client for $5 million.

As I understand it, the case was settled on appeal at a figure relatively close to that amount. Is that an accurate description of the case?

Mr. **Forester**. Yes, sir.

Senator **Heflin**. This seems to be a situation where you tried to protect your client's insurance company from its own bad judgment, but were unsuccessful. Do you think you could have done more to prevent this rather embarrassing outcome?

Mr. **Forester**. Yes, we probably should have done more. We probably should not have insisted on speaking with someone with the insurance company, the St. Paul company, with more authority than the person we were in contact with.

Senator Heflin. In this case, your client was a mining company, your co-counsel had been retained to represent the insurance company's involvement. When your pleas to the insurance company fell on deaf ears, did you make any effort to warn your client, Eastover, of the pending legal disaster so they could weigh in with their insurers?

Mr. Forester. This was their insurer and we dealt closely with their management people. They were aware of what potentially could happen. I do not think they were aware that it was going to be that bad. But we knew it was going to be bad, or I felt like it was going to be bad.

Senator Heflin. Sometimes cases which do not have successful outcomes can teach a lawyer more than a case in which he is victorious. What did you learn from the *Woolum* case that makes you a better lawyer and that you think will help you be a good judge?

Mr. Forester. I learned that when you feel you are right in your recommendations to the insurance companies, that you need to probably be a little more firm than we were in our recommendation, and we should have insisted that we speak with someone who had more authority, someone in the higher management level of the claims department of the company.

Senator Heflin. In the *Woolum* case I have asked about, you were unable to work out a satisfactory pretrial settlement for one reason or another. Lawyers we have talked to in eastern Kentucky have told us about other cases in which it appears that you urged your clients to settle but were unable to convince them. That is all part of a litigator's experience, of course, and we do not fault you for it. Some clients are more receptive than others to the suggestion of settlement, regardless of persuasive abilities of their counsel.

If you are confirmed as a Federal judge, will you be involved in the settlement of disputes before trials from a different perspective? What in your view is the proper role of a judge in encouraging pretrial settlements? What in your background best demonstrates that you can fulfill this role effectively as a U.S. district judge?

Mr. Forester. Other than the one case that we have talked about, I think I have been pretty effective in conveying to my client what ought to be done. I do believe that a Federal judge should certainly encourage settlement discussions, but I would never want to be in a situation where I put too much pressure on litigants to settle. They are entitled to their day in court, and if they cannot agree on a figure, then they ought to have their trial. If they can agree on a figure let it be settled.

Senator Heflin. Thank you. There will be some other questions submitted in writing, and we would appreciate an expeditious return of them.

[The questions and answers referred to follow:]

RESPONSE TO QUESTIONS HANDED TO KARL S. FORESTER, OF KENTUCKY, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF KENTUCKY

1. MR. FORESTER, HOW DOES A RESPONSIBLE JUDGE GO ABOUT THE PROCESS OF INTERPRETING SUCH SEEMINGLY OPEN-ENDED CONSTITUTIONAL PROVISIONS AS THE DUE PROCESS OR EQUAL PROTECTION CLAUSES?

ANSWER: A responsible judge should interpret the due process or equal protection clauses based upon well established and reasoned precedent. These provisions are of great substantive importance and should never be interpreted in such a manner as to lessen the essential meaning as established by the Constitution and interpreted by the courts.

2. MR. FORESTER, THOMAS JEFFERSON REMARKED SHORTLY AFTER THE RATIFICATION OF THE CONSTITUTION THAT "OUR NATION'S PARTICULAR SECURITY IS THE POSSESSION OF A WRITTEN CONSTITUTION. LET US NOT MAKE IT A BLANK PAPER BY CONSTRUCTION." MR. FORESTER, WHAT DO YOU THINK HE MEANT BY THAT WARNING: "LET US NOT MAKE IT A BLANK PAPER BY CONSTRUCTION?"

ANSWER: Mr. Jefferson was concerned that the tripartite form of government provided for in the Constitution might be abrogated by one branch assuming power and authority not originally provided for by the framers of the Constitution.

Respectfully submitted this 30th day of June, 1988.

Karl S. Forester

LAW OFFICES
FORESTER, FORESTER, BUTTERMORE & TURNER, P. S. C.
FORESTER BUILDING - FIRST STREET
P. O. BOX 935
HARLAN, KENTUCKY 40831-0935

WILLIAM R. FORESTER
KARL S. FORESTER
RODNEY E. BUTTERMORE, JR.
JOHNNIE L. TURNER
SUSAN COLEMAN LAWSON

MARK L. FORD
TERRY R. BECKNER
MARYE V. CAMPBELL

TELEPHONE AND TELECOPY
(606) 573-7000

July 8, 1988

VIA PUROLATOR COURIER

Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
Room SD-224, Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

Dear Senator Leahy:

Thank you for your letter of July 7, 1988.

Enclosed herewith please find my response to the written questions submitted in behalf of Senator Charles E. Grassley.

Very truly yours,

Karl S. Forester

KSF/lw
Enc.

ANSWERS TO WRITTEN QUESTIONS FOR KARL FORESTER

1. Your questionnaire responses indicate that you belong to two social clubs: the Harlan Country Club in your home town of Harlan, KY, and the Lafayette Club in Lexington, KY. As you know, the standards enunciated by the Judicial Conference of the United States specify that it is inappropriate for a federal judge to belong to any organization that practices invidious discrimination. What have you done to ascertain the membership policies of these clubs? Have you satisfied yourself that your continued membership in them is consistent with the ethical obligations of a federal judge?

ANSWER: NEITHER CLUB HAS RESTRICTIVE MEMBERSHIP POLICIES. I ASCERTAINED THE MEMBERSHIP POLICIES OF THE HARLAN COUNTRY CLUB FROM PERSONAL KNOWLEDGE AND AS THE RESULT OF A DISCUSSION WITH SEVERAL MEMBERS OF THE BOARD OF DIRECTORS. PRIOR TO JOINING THE LAFAYETTE CLUB, I DISCUSSED THE MEMBERSHIP POLICIES OF THAT CLUB WITH THE MEMBERSHIP DIRECTOR.

YES, I HAVE SATISFIED MYSELF THAT CONTINUED MEMBERSHIP IN BOTH THE LAFAYETTE CLUB AND THE HARLAN COUNTRY CLUB IS CONSISTENT WITH THE ETHICAL OBLIGATIONS OF A FEDERAL JUDGE. SHOULD I EVER DETERMINE THAT CONTINUED MEMBERSHIP IS NOT CONSISTENT WITH THE OBLIGATIONS OF A FEDERAL JUDGE, I WOULD HAVE NO HESITANCY IN RESIGNING MY MEMBERSHIP.

2. Although you have never served as a judge, you have been appointed as an arbitrator in some cases, including one in which you were appointed by Judge Siler, of the court to which you have been nominated. Please describe briefly the federal case in which you were appointed as an arbitrator, and your role as an arbitrator in that matter. Did you render a written decision? Was that decision subsequently challenged or otherwise reviewed by the federal court? How has your experience as an arbitrator helped to prepare you to serve as a United States District Judge?

ANSWER: THIS MATTER INVOLVED A DISPUTE RELATING TO THE PURCHASE OF ALL OF THE ISSUED AND OUTSTANDING SHARES OF STOCK OF APPALACHIAN MINE SPLICE COMPANY BY CENTRAL TECHGAS, INCORPORATED. THE PURCHASE CONTRACT REQUIRED THAT ALL DISPUTES BE SETTLED BY ARBITRATION AND THAT IF THE PARTIES COULD NOT AGREE UPON A THIRD ARBITRATOR, THAT EITHER PARTY COULD PETITION THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA FOR AN ORDER APPOINTING THE THIRD ARBITRATOR. SUCH A PETITION WAS FILED AND THE VIRGINIA COURT CERTIFIED THE MATTER TO THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF KENTUCKY FOR THE REASON THAT UNDER THE TERMS OF THE PURCHASE CONTRACT, ANY DISPUTE WAS TO BE RESOLVED UNDER THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

A WRITTEN DECISION WAS RENDERED AND I DO NOT BELIEVE THAT DECISION WAS CHALLENGED OR OTHERWISE REVIEWED BY A FEDERAL COURT.

MY EXPERIENCE AS AN ARBITRATOR HAS TO SOME EXTENT HELPED PREPARE ME TO SERVE AS A UNITED STATES DISTRICT JUDGE BY GIVING TO ME A FEEL FOR THE BURDENS AND RESPONSIBILITIES OF AN ADJUDICATOR AS OPPOSED TO THE BURDENS AND RESPONSIBILITIES OF AN ADVOCATE.

3. In the case of Thomas v. Surf Pools, Inc., you represented a young man who was seriously injured in a swimming pool accident. You settled the case with the municipality which owned and operated the pool, but were unsuccessful in obtaining any damages from the company which designed and constructed the pool. The case was appealed to the Kentucky Court of Appeals. That court's opinion, reported at 602 S.W.2d 437, seems rather critical of the way the case was handled. For example, it indicates that you and your co-counsel predicated your claim of negligence on the fact that the defendant failed to warn the plaintiff of the danger of slipping on a painted area of the pool, but you could not prove who had painted the area, or whether the painting caused the plaintiff to fall. In fact, you (or your co-counsel) told the trial court that the painting was an "insignificant" factor in the plaintiff's accident.

The Court of Appeals goes on to say that you relied in your theory of the case on an irrelevant statute that did not apply to this defendant. It also dismissed your claim that there was newly-discovered evidence in the case by noting that you failed to take the deposition of the witness in question, at which you could have learned of this evidence before the trial rather than afterwards.

Because appellate opinions may give a misleading impression of what went on at trial, do you have any comments on the opinion of the Kentucky Court of Appeals in the Surf Pools case that you wish to offer for the record? What did the Surf Pools case teach you that has made you a better lawyer and that you think will help you be a good judge?

ANSWER: ALTHOUGH I AND MY CO-COUNSEL, WHO IS A LEADING PERSONAL INJURY ATTORNEY IN KENTUCKY, AND WHO IS THE IMMEDIATE PAST PRESIDENT OF THE KENTUCKY BAR ASSOCIATION, HAVE THE HIGHEST REGARD AND RESPECT FOR THE COURT OF APPEALS OF KENTUCKY, WE WERE DISAPPOINTED AND SADDENED BY THE OPINION RENDERED BY THAT COURT IN THE THOMAS CASE.

WE CONTINUE TO BELIEVE THAT THE TRIAL COURT ERRED IN FAILING TO GRANT A DIRECTED VERDICT ON THE ISSUE OF LIABILITY AGAINST THE NON-SETTLING DEFENDANT. WE TRIED TO ESTABLISH THAT PRIOR TO THE ACCIDENT, THE PRESIDENT OF SURF POOLS, INC., HAD OBSERVED THAT THE "HANDRAIL" (PAINTED AREA) HAD BEEN PAINTED AND THAT HE KNEW AND REALIZED THAT THE RISK OF INJURY TO THOSE USING THE POOL WAS INCREASED BECAUSE THE COEFFICIENT OF FRICTION WAS LESSENED. FURTHERMORE, WE OFFERED APPLICABLE KENTUCKY AUTHORITY THAT THE DEFENDANT DID HAVE THE DUTY TO GIVE WARNING OF A DANGEROUS CONDITION WHICH WAS NOT APPARENT TO MOST PEOPLE BUT WAS APPARENT TO THE REPRESENTATIVE OF THE DEFENDANT COMPANY. THE COURT OF APPEALS DID REJECT THIS ARGUMENT.

FURTHERMORE, BOTH CO-COUNSEL AND MYSELF WERE OF THE OPINION THAT KENTUCKY STATUTES AND ADMINISTRATIVE REGULATIONS REQUIRED THAT A COMMERCIAL SWIMMING POOL BE DESIGNED BY A LICENSED ENGINEER. THIS WAS A RATHER TECHNICAL ARGUMENT WHICH WE HAD HOPED WOULD RESULT IN THE FINDING OF NEGLIGENCE PER SE BY THE TRIAL COURT.

WITH REGARD TO OUR FAILURE TO TAKE THE DEPOSITION IN DISCOVERY OF THE WITNESS IN QUESTION, I ENCLOSE HEREWITH PAGES 23 THROUGH 29 OF OUR BRIEF RELATING TO THAT SITUATION WHICH I BELIEVE ADEQUATELY EXPLAINS THE REASONING OF COUNSEL IN REGARD TO SAME.

ALTHOUGH HINDSIGHT IS A WONDERFUL TOOL FOR CRITIQUING A CASE AND A TRIAL STRATEGY, CO-COUNSEL AND I HAVE BEEN UNABLE TO CRITICIZE OURSELVES IN REGARD TO THE MANNER IN WHICH THE CASE WAS TRIED. WE DID ALL THAT COULD POSSIBLY BE DONE; HOWEVER, WE SIMPLY FAILED TO CONVINCE THE JURY ON SEVERAL IMPORTANT FACTUAL MATTERS.

THE EXPERIENCE OF BEING INVOLVED OVER A PERIOD OF TWO WEEKS WITH AN OUTSTANDING CO-COUNSEL AND APPEARING BEFORE A VERY COMPETENT AND QUALIFIED TRIAL JUDGE HAS HELPED ME TO BE A BETTER LAWYER, AND THE SEASONING RECEIVED FROM THAT TRIAL SHOULD HELP ME TO BE A GOOD JUDGE.

I, Karl S. Forester, do certify and attest that the information set out above is true and correct to the best of my knowledge, this 8th day of July, 1988.

K. S. Forester

Karl S. Forester

STATE OF KENTUCKY

COUNTY OF HARLAN

SUBSCRIBED AND SWORN TO before me by KARL S. FORESTER this 8th day of July, 1988.

Deana L. Wynn
Notary Public, Ky. State at Large

My Commission Expires:
March 23, 1989

ARGUMENT 4

THE COURT ERRED IN OVERRULING THE APPELLANT'S MOTION FOR A NEW TRIAL ON THE GROUNDS OF NEWLY DISCOVERED EVIDENCE.

Following the jury verdict, it came to the attention of counsel for Appellant that there existed in the files of both the attorney for the City of Evarts and the attorney for Surf Pools, Inc. a transcription of a telephonic interview between an adjuster for the insurance carrier for the City and a witness by the name of Ronnie Miller. This telephonic interview, which was conducted in January, 1978, allegedly contained several statements by Ronnie Miller which were substantially different from the statements made by him at the trial.

At the hearing on the Motion for a New Trial, the Trial Court required counsel for Surf Pools, Inc. to produce this statement of Ronnie Miller, which is now attached in the Appendix as Exhibit "X." It does, indeed, contain numerous statements by Ronnie Miller substantially different from those given by him at the trial and, therefore, constitutes newly discovered evidence, mandating a new trial.

In order for this Court to fully appreciate the impact of this newly discovered evidence, a brief review of the strategies at trial is in order. The very heart of the defense of this case by Surf Pools, Inc. was the assertion that Bobby Thomas did not slip at all on this handrail, but instead, simply walked to the edge of the pool and dove in head-first into shallow water, striking his head and injuring himself.

That this was the linchpin of the defense strategy is obvious from the cross-examinations conducted of Appellant's witnesses, from the Appellee's witnesses, and by the closing argument.

The cross-examination of Todd Smith, a diving expert, was designed to get him to admit one should not dive head-first into three or four feet of water. He replied it was safe to do so and done all the time if one's dive was shallow. (TE, Vol. IV, 271-272)

The cross-examination of Dr. Rachel Eubanks centered primarily on the statement made by Bobby Thomas to her as he was lying critically injured on the edge of the pool, "What a dumb thing I did." What was "dumb" was never explained. (TE, Vol. V, 405)

The cross-examination of Edna Hendrickson was to the same effect. (TE, Vol. V, 399)

The cross-examination of Dr. Ahmed, emergency room physician at Harlan, centered on the history written on the emergency room record "...sustained injury to the neck after diving into the swimming pool at Evarts," and the type of injury written on that same record of "Spinal cord injury, diving injury." Never mind that Dr. Ahmed couldn't remember the occasion, didn't know from whom the history was obtained, and that doctors refer to all spinal cord injuries sustained around water, whether pools, rivers, or creeks, as "diving injuries." This is a generic term. (TE, Vol. V, 444, 446)

The taking of Dr. Chenault's deposition was to establish, by Chenault's medical records, a history of "...apparently dove into shallow end of a swimming pool," (TE, Vol. IV, 293), although Dr. Chenault admitted on cross-examination by counsel for Appellant that (1) the injury to the spinal cord was due to excessive flexion of the neck, an acute forward bending down of the neck; (2) which could be caused only by a force directed to the back and top of the head, driving the chin down towards the chest; and (3) one would have to strike the bottom of the pool almost vertically to sustain this injury. (TE, Vol. IV, 298-300)

The cross-examination of Dr. Stevens was designed to elicit that Bobby simply dove head-first into shallow water. The [illegible] occurred when Dr. Stevens, like Dr. Chenault, testified that this flexion injury could occur only with Bobby going into the pool at a near vertical angle. (TE, Vol. VI, 477-478)

Thus, all of the circumstantial evidence from which the jury could infer that Bobby dove, on purpose, into shallow water was well explained. Only Ronnie Miller remained.

Counsel for Appellant had interviewed Ronnie Miller on several occasions prior to the time of trial and had obtained from him a written statement, a copy of which is attached in the Appendix as Exhibit "Y." Because of these interviews and because of this statement, counsel knew full well that Ronnie Miller was the single most damaging witness. Counsel was also aware before the trial that Ronnie Miller had been subpoenaed by counsel for Surf Pools, Inc. and that there simply was no way to escape the fact that Ronnie Miller was going to testify in the case. As a matter of trial strategy, then, counsel for Appeallant decided to call to the stand as many of the witnesses who were at the pool at the time of the injury as could be found, sandwiching Ronnie Miller in the middle of these witnesses.

As can be seen by looking at Exhibit "T," the Appellant's statement of Ronnie Miller, it was obvious to counsel for Appellant that Ronnie Miller was going to testify that he had been standing in an area of the pool exactly where Bobby Thomas said he fell and yet didn't see Bobby fall; that he was, at the time, generally observing the entire area of the pool without his attention being distracted; that after he helped Bobby to the edge of the pool, he asked Bobby what happened and Bobby said he dived into the pool and hit his head.

As predicted, Ronnie Miller testified to the same thing at trial. (TE, Vol. V, 429-437) He added that his attention was not directed in any particular manner, and that had Bobby fell where Bobby said he fell, he would have known it. (434) His description of the events leading to Bobby's statement that "he dived into the pool and hit his head" climaxed the cross-examination. (435)

All of it was devastating. All of it was predictable. All of it was consistent with the statement given by him to counsel for Appellant. All that could be done was to "grin and bear it."

To the amazement of counsel, the statement that had been given by Ronnie Miller to the adjuster for the City, which statement was not known to counsel for Appellant at the time of trial, included such statements:

1. Ronnie Miller was "talking to someone," was "mainly trying to watch his younger brother" who "couldn't swim." (Contradicting testimony of attention not directed in any particular way.)

2. "Or you don't even know whether he dived or what happened? "No sir." (Contradicting testimony that Bobby Thomas said he dived in.)

3. "...they said I slapped his face, tried to awaken him to see what had happened to him and he looked up at me then and said he was alright, he wouldn't have trouble breathing." (Not mentioning Bobby Thomas at this point said he dived in.)

4. "Anything else you could think of, uh, that would come to your mind as being important that we haven't talked about...? "No sir."

5. "...You hadn't heard him complain, have any complaints at all about the pool that might, anything at all about it had you?" "No sir. I had heard no complaints."

6. "I believe we have pretty well covered everything, Ronnie, uh, is there anything else at all you could think of or do you think that is about it?" "That's all I can think of."

Had counsel been armed with this statement at the trial, Ronnie Miller would have been substantially discredited. His statement was prior in time and, therefore, less remote than the statement he had given counsel for Appellant.

Kentucky has a series of cases that permit the granting of a new trial for newly discovered evidence. Some of these cases seem to indicate that this newly discovered evidence, if it is only cumulative or if it is only used to impeach, should not be evidence that rises to the dignity of evidence that demands a new trial.

However, the evidence that impeaches the key witness in the case is evidence of that which will require a new trial. In Louisville Belt and Iron Co. v. Hart, Ky., 92 S.W. 952 (1906), the Court laid down the general rule that impeaching testimony usually does not require a new trial, but then went on to state:

> "It is contended that a new trial is never granted to allow a witness to be impeached. That is a general rule. But the effect of this evidence was more than to merely impeach the witness. But whether it was or not, he being the only witness who claims to have seen the accident, beside the appellee, the materiality and controlling effect of the newly discovered evidence becomes perfectly apparent."

The Court went on to hold that a new trial, granted by the Circuit Court, was proper.

As is stated in 58 Am.Jur.2d, New Trial, Section 173:

> "It is well settled that a new trial will not be granted upon the ground of newly discovered evidence where it appears that such new evidence can have no other effect than to discredit the testimony of a witness at the original trial, contradict a witness's statements, or impeach a witness, unless the testimony of the witness who is sought to be impeached was so important to the issue, and the evidence so strong and convincing that a different result would necessarily follow were a new trial granted." (Emphasis added.)

It is very likely that the jury simply believed that Bobby Thomas did not slip on the handrail, but dove head-first into this pool on purpose. This was the heart of the presentation of the defense.

The only witness at the pool who came anywhere close to supporting this defense theory was Ronnie Miller. Had counsel for Appellant known and obtained Ronnie Miller's statement prior to trial, counsel for Appellant would not have put Ronnie Miller on the stand at all, but would have waited until Ronnie Miller was put on the stand by the Appellee and then impeached Ronnie Miller with his statement. The effect of this impeachment would have been to discredit this witness completely, thereby utterly destroying this defense theory.

The jury deliberated a long time in this case. The vote was 9 to 3. It is obvious to counsel for Appellant, who lived with this case for many months and who tried it for over one week, that Ronnie Miller was the main reason for the verdict for Surf Pools, Inc. and that if a new trial is granted, Ronnie Miller will be impeached by his statement and the outcome will be completely different.

LAW OFFICES
FORESTER, FORESTER, BUTTERMORE & TURNER, P. S. C.
FORESTER BUILDING - FIRST STREET
P. O. BOX 935
HARLAN, KENTUCKY 40831-0935

WILLIAM R. FORESTER
KARL S. FORESTER
RODNEY E. BUTTERMORE, JR.
JOHNNIE L. TURNER
SUSAN COLEMAN LAWSON

MARK L. FORD
TERRY R. BECKNER
MARYE V. CAMPBELL

TELEPHONE AND TELECOPY
(606) 573-7000

July 11, 1988

VIA PUROLATOR COURIER

Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
Room SD-224, Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

Dear Senator Leahy:

Enclosed herewith please find my response to the written questions submitted in behalf of Senator Charles E. Grassley. I now note that my response of July 8, 1988 was to questions which you propounded rather than Senator Grassley. Please excuse the confusion on my part.

I do appreciate the opportunity I had to meet you on June 29th, and I also appreciate the kind attention you have devoted to this nomination.

Very truly yours,

Karl S. Forester

KSF/lw
Enc.

ANSWERS TO WRITTEN QUESTIONS FOR KARL FORESTER

1. I am troubled by your answer to the Committee's question asking your views on judicial activism. (Committee questionnaire, question number 5). Your answer suggests that you are unaware of concrete examples of judicial activism; of federal courts taking over the operation of, for example, schools, mental hospitals, police departments, and regulatory bureaucracies.

(a) Do you doubt that there have been instances in which federal courts have acted in the manner described by the Committee in question 5 (a-e)?

ANSWER: I HAVE NO DOUBT THAT THERE HAVE BEEN INSTANCES IN WHICH FEDERAL COURTS HAVE ACTED IN THE MANNER DESCRIBED BY THE COMMITTEE IN QUESTION 5 (a-e).

You went on to say, "... occasionally the judicial branch places itself in the position of being a super legislature which, **it is said**, is inappropriate since the judiciary is not amenable to the political process." (emphasis added)

(b) In what circumstance could you foresee it appropriate for a life-tenured, unelected, federal judge to act as a "super legislature"?

ANSWER: PERHAPS MY USE OF THE TERM "SUPER LEGISLATURE" WAS MISLEADING. I AM A FIRM BELIEVER THAT IT IS ESSENTIAL THAT THE DOCTRINE OF SEPARATION OF POWERS BE MAINTAINED.

(c) Would such an action be constitutional?

ANSWER: NO.

2. (a) Would you agree that validly-enacted statutes, and the official acts of electorally-responsible government officials, enjoy a presumption of constitutionality? If so, what in our system of government justifies such a presumption?

ANSWER: YES. OUR TRIPARTITE FORM OF GOVERNMENT REQUIRES NO LESS.

(b) Would you agree that the basic premise of democratic government is that policy choices are ordinarily to be decided through the electoral process -- not by unelected judges -- or are you closer to the view expressed by Justice Brennan, that "unabashed enshrinement of majority will" is a matter of "blind faith" in democracy?

ANSWER: I AGREE THAT THE BASIC PREMISE OF DEMOCRATIC GOVERNMENT IS THAT POLICY CHOICES ARE ORDINARILY TO BE DECIDED THROUGH THE ELECTORAL PROCESS AND NOT BY UNELECTED JUDGES.

I, Karl S. Forester, do certify and attest that the information set out above is true and correct to the best of my knowledge, this 11th day of July, 1988.

Karl S. Forester

STATE OF KENTUCKY

COUNTY OF HARLAN

SUBSCRIBED AND SWORN TO before me by KARL S. FORESTER this 11th day of July, 1988.

Diana L. Hyson

Notary Public, Ky. State at Large

My Commission Expires:

March 23, 1989

Senator **Heflin**. Thank you very much.

Mr. **Forester**. Thank you, Senator.

Senator **Heflin**. The committee is adjourned.

[Whereupon, at 3:25 p.m., the committee was adjourned.]

DONALD E. ABRAM

Birth:	February 8, 1935	Des Moines, Iowa
Marital Status:	Married	Frances Cooley Abram four children
Legal Residence:	Colorado	
Education:	1953 - 1957	University of Colorado B.S. degree
	1960 - 1963	University of Colorado J.D. degree
Bar:	1963	Colorado
Military Service:	1957 - 1960	United States Navy
Experience:	1963 - 1975	Phelps, Fonda, Hays and Wills Associate 1963-1968 Partner 1968-1975
	1970 - 1974	Councilman Pueblo City Council (President, 1972-1974)
	1975 - 1981	State District Court Judge Tenth Judicial District
	1977 - 1981	University of So. Colorado Instructor (part-time)
	1981 - present	United States Magistrate District of Colorado
	1985 - present	University of Denver Law School Lecturer in Law (part-time)
Office:	U.S. Courthouse 1929 Stout Street Room C 160 Denver, Colorado 80294-3576	
Home:	4950 South Clinton Greenwood Village, Colorado 80111-1332	

To be United States District Judge for the District of Colorado

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name. Donald Eugene Abram

2. Address:

Residence: 4950 South Clinton
Greenwood Village, CO
80111-1332

Office: U.S. Courthouse
1929 Stout St.
Room C 160
Denver, CO 80294-3576

3. Date and place of birth.

February 8, 1935, Des Moines, Iowa

4. Marital Status. List spouse's occupation, employer's name and business address.

Married to Frances Jennette (Cooley) Abram. She is presently employed as a secretary to the Dean of Students, Horizon Middle School, Cherry Creek School District No. 5, 4700 S. Yosemite St., Englewood, CO 80111.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.

University of Colorado	9-53 to 6-57	BS(Bus) 6-57
University of Colorado	9-60 to 1-63	J.D. '63

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

I was with the same law firm from graduation to my appointment as a district judge of the state of Colorado. I commenced employment on April 1, 1963 with the firm name as Phelps, Fonda, Hays and Wills. The firm went through two mergers with the final name being Peterson and Fonda, P.C. containing thirteen attorneys. I became a partner in 1968. I left the firm in August, 1975 when sworn in as a district judge.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

7 June 1957 to 8 June 1960 U.S. Navy 564576/1100
Gunnery Officer, OOD (Fleet Operation): Command Duty Officer.
8 June 1960 to Oct., 1985 U.S. Navy Reserve 485-34-2094/1115
Captain, USNR-R(Ret.) Surface Warfare Officer

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

   NROTC Scholarship, University of Colorado
   Sophomore, Junior and Senior Mens Honoraries, University of Colorado
   Board of Editors, University of Colorado Law Review (Bus. Major)
   Colorado Jaycee Distinguished Service Award, 1970 (Co-Awardees: Senator William Armstrong; Bill Crouch)
   Pueblo Rotary Club Distinguished Service Award, 1974

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

   Pueblo County Bar Association
   Colorado Bar Association, Vice-President, 1975
   American Bar Association
   National Council of United States Magistrates, Tenth Circuit Director 1984-1987; Treasurer June, 1987 to present.
   Legislative Committee Study of Mental Health Care Facilities and Funding (1981-1982)
   Legislative Subcommittee on Grand Jury Reform (1978)
   Chairman - Juvenile Judges Association of Colorado (1979-1980)
   Supreme Court Subcommittee on Reorganization of the State Courts (1981-1983)
   Supreme Court Commission on Legal & Judicial Continuing Legal Education (1972-1980) Organizing Commission

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

    I am Treasurer and on the Board of the National Council of United States Magistrates. The NCUSM represents the interest of the United States Magistrates in supporting legislation which affects United States Magistrates such as pay and retirement bills before Congress.

    Other organizations to which I belong are:

    Wellshire Presbyterian Church
    American Association of Retired Persons (AARP)

11. Court Admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require

special admission to practice.

State of Colorado	April 5, 1963
U.S. District Court	April 5, 1963
Tenth Circuit Court of Appeals	July 9, 1969

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readlily available to you, please supply them.

"Personal Injury Damages, in Colorado," University of Colorado Law Review. Volume 35, 1963.

I do not speak on constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was July 21, 1987.

14. Judicial Office: State (chronologically) any judicial office you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

United States Magistrate, United State District Court for the District of Colorado, August, 1981 to present date. Limited to trial of civil cases by parties' consent and misdemeanor criminal trials.

Appointed State District Court Judge, Tenth Judicial District, Pueblo, Colorado, August, 1975 to August, 1981. General jurisdiction. I heard civil, criminal, juvenile, mental health, domestic relations and probate cases.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Citations of ten most significant opinions:

Lovato v. District Court for the Tenth Judicial District, 601 P.2d 1072 (Colo. 1979) (Established the legal standard of brain death.)

P.F. v. Walsh, 648 P.2d 1067 (Colo. 1982) (Constitutionality of the voluntary commitment of children to the state hospital.)

People in the Interest of Freeman, 635 P.2d 892 (Colo. 1981) (Validity of statute permitting medication of mentally ill.)

Thomas v. County Court in and for Pueblo County, 596 P.2d 768 (Colo. 1979) (Limitation of District Attorney to file complaint after dismissal of indictment.)

*Qureshi v. Diesslin, 654 F.Supp. 555 (D. Colo. 1987) (Order approving Magistrate's recommendation on exhaustion of remedies.)

*Rice v. Hamilton Oil, 658 F.Supp. 446 (D. Colo. 1987) (Class Action on securities fraud.)

*United States of America v. Tynan, Civil Action No. 80-F-400 (D. Colo. 1987)(Submitted for publication). (Sword and Shield issue as to admission of grand jury investigation.)

*Yellon v. Cooper, 828 F.2d 1471 (10th Cir. 1987) (Waiver of speedy trial - interstate detainer.)

In re Diasonics Securities Litigation, 110 F.R.D. 570 (D. Colo. 1986) (Fiduciary responsibility of officers of corporation and attorney-client privilege.)

Western National Bank of Denver v. Employees Insurance of Wausau, 109 F.R.D. 55 (D. Colo. 1985) (Attorney acting as adjuster and attorney applicability of work-product privilege.)

(2) I am not aware of any appellate decisions with significant criticism of substantive or procedural rulings either as a state judge or as a United States Magistrate.

Cases where I have been reversed as a state judge are as follows:

People v. Hight, 599 P.2d 885 (Colo. 1979) (Judicial notice of ordinance.)

Gandy v. Park National, 615 P.2d 20 (Colo. 1980) (Interpretation of guarantee on note - UCC.)

People ex rel Losavio v. Gentry, 606 P.2d 57 (Colo. 1980) (Authority of special prosecutor.)

P.V. v. District Court, 609 P.2d 110 (Colo. 1980) and People in the Interest of T.B.F., 610 P.2d 501 (Colo.

1980) (I ruled the legislature should set statutory speedy trial time for juveniles--Supreme Court made applicable adult statutory speedy trial time.)

Torres v. Portillos, 638 P.2d 274 (Colo.1981) (Validity of attorney's fees-handled-lessee action.)

Cases where I have been reversed in federal court are as follows:

*Ward v. Kort, 762 F.2d 856 (10th Cir. 1985) (Legal access of mental health patients.)

*Denton v. Ricketts, 758 F.2d 489 (10th Cir. 1984) and 791 F.2d 824 (10th Cir. 1986) (Ineffective assistance of counsel - Habeas Corpus.)

*Naranjo v. Ricketts, 696 F.2d 83 (10th Cir. 1982) (Exhaustion - Habeas Corpus.)

(3) Significant opinions with state or federal constitutional issues:

P.F. v. Walsh, 648 P.2d 1067 (Colo. 1982) (Constitutionality of statute authorizing commitment of a minor to mental hospital.)

Lovato v. District Court for the Tenth Judicial District, 601 P.2d 1072 (Colo. 1979) (Termination of life support systems of a brain dead child - mother right to privacy and due process.)

*Holland v. District Court, Douglas County Colo., 831 F.2d 940 (10th Cir. 1987) (Ex Post Facto in extension of a statute of limitation.)

*Graham v. Wilson, 828 F.2d 656 (10th Cir. 1987) (Tenth Circuit reversed the district judge and adopted magistrate's findings - harmless error.)

*Denton v. Ricketts, 758 F.2d 489 (10th Cir. 1984) and 791 F.2d 824 (10th Cir. 1986) (Reversed magistrate's finding of ineffective assistance of counsel in light of Strickland v. Washington, 466 U.S. 688 (1984).)

*Ward v. Kort, 762 F.2d 856 (10th Cir. 1985) (Magistrate found counsel sufficient to meet legal access right of mental patients - Tenth Circuit reversed and required assistance in drafting complaints.)

P.V. v. District Court, 609 P.2d 110 (Colo. 1980) (Ruling that the legislature should set statutory speedy trial time reversed.)

*Federal circuit decisions are based upon appeals of Magistrate findings and conclusions of law adopted by the District Judge and appealed.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

President (Mayor) of the City of Pueblo, 1972-1974 (elected by council members)
Councilman, Pueblo City Council, 1970-1974 (elected).

17. **Legal Career:**

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

   I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

   I never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

   I was with the same law firm from graduation to my appointment as a district judge of the state of Colorado. I commenced employment on April 1, 1963 with the firm names as Phelps, Fonda, Hays and Wills. The firm went through two mergers with the final name being Peterson and Fonda, P.C. containing thirteen attorneys. I became a partner in 1968. The last address of the firm was 740 Thatcher Bldg., Pueblo, CO 81003. I left the firm in August, 1975 when sworn in as district judge.

b. 1. What has been the general character of your law practice, dividing it into period with dates if its character has changed over the years?

I specialized in insurance defense with the last several years handling medical and hospital malpractice claims for St. Paul Insurance Company and Hartford Insurance Company. I also handled automobile and products liability cases. As a new practitioner with the firm, I did divorce, real estate and probate. After the firm merged with Peterson, Evenson and Mattoon in approximately 1968, I did exclusively trial litigation for insurance companies. I tried cases in the district courts of all southeastern judicial districts, El Paso County, Pueblo County and San Luis Valley.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Hartford Insurance Company, Royal-Globe Insurance Company, St. Paul Insurance Company, Fireman's Fund American Insurance Company, Aetna Life & Casualty Insurance Company, CUNA Mutual Insurance Company, Hawkey-Security Insurance Company, Maryland Casualty Insurance Company, Employees Casualty Insurance Company, Parkview Episcopal Hospital, Star Journal Publishing Company, Farmers Lumber Co., First National Bank of Pueblo and Farmers Acceptance Corporation.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

2. What percentage of these appearance was in:
   (a) federal courts: 1%
   (b) state courts of record: 99%
   (c) other courts: None.

3. What percentage of your litigation was:
   (a) civil: 99%
   (b) criminal: 1% During my thirteen years as an attorney, I represented indigent defendants as appointed by the court and as guardian in mental health hearings at the Colorado State Hospital.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Between 1963 and 1975, I probably averaged two trials a month. My estimate would be a minimum of 250 trials.

5. What percentage of these trials was:
   (a) jury: 95%
   (b) non-jury: 5%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I do not have available to me the legal files of my law firm since I have been a judge for over twelve years. It was the policy of the firm to destroy closed files over six years old. The firm split into two firms in 1984. I have checked with both firms and files are not available. The Colorado court system was not computerized up to 1975. The courts do not have cases indexed by the names of attorneys. I am providing cases which were appealed and some additional cases from memory.

Hayes v. Fireman's Fund insurance Company, 460 P.2d 225 (1969). Honorable Matt J. Kikel, Judge. Laurence A. Ardell, plaintiff's counsel. Interpretation of insurance clause concerning the "regular use" of a substitute vehicle.

Ackerman v. City of Walsenburg, 467 P.2d 276 (1970). Honorable John N. Mabry, Judge. Glenn G. Saunders for Ackerman, D.E. Abram for Cucharas Irrigation Co. and Raphael J. Moses for City of Walsenburg. Issue was whether the city could change direct flow rights to storage rights to the detriment of downstream users.

Massachusetts Mutual Life Insurance Company v. DeSalvo, 482 P.2d 380 (1971). Honorable Philip Cabibi, Judge. Laurence A. Ardell, counsel for DeSalvo. Interpretation of CF&I group insurance clause concerning termination of coverage.

Farmers Acceptance Corporation v. DeLozier, 496 P.2d 1016 (1972). Honorable Matt J. Kikel, Judge. Sonja E. Warberg for DeLozier. Retention of payments based on an assignment of a construction contract as security for a contractor loan.

Kushnir v. Benson, 520 P.2d 134 (Colo. App. 1973). Honorable Jack Seavy, Judge. Laurence Ardell counsel for defendants, Bensons. Issues involved were standard of care of a child, applicability of the foreseeability instruction.

Brown v. Rosenbloom, 524 P.2d 626 (Colo. App. 1974) aff'd. 532 P.2d 948 (1975). Honorable Howard Purdy, Judge. Walter Gerash for plaintiff Brown, Richard Hall for Dr. Province, D.E. Abram for Dr. Rosenbloom. Judicial immunity of physicians sitting on civil sanity medical commission and good faith defense.

Koncilja v. Trinity Universal Insurance Co., 528 P.2d 939 (Colo.App. 1974). Honorable Jack Seavy, Judge. Gustave Sandstrom for plaintiff Koncilja. Interpretation of home owner's policy concerning ground water damage.

Helen White v. The Continental Casualty Company, 414 F2d 549 (10th Cir. 1969) affirming 67 C 219, United States District Court for Colorado. Honorable William Doyle, Judge. Lester L. Ward for White. Question of coverage on a life insurance policy by Minnequa Bank of Pueblo when the president was killed attending a Mountain Bell Board meeting.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My practice as an insurance defense attorney did not produce significant legal issues which were unique other than the cases appealed after litigation. As a member of the first Colorado Supreme Court Board of Continuing Legal and Judicial Education, the Board studied and developed a standard of legal education for Colorado. An extensive study was made of mandatory legal education statutes or court rules throughout the United States. The Board then drafted the Supreme Court rules for legal and judicial education for the Supreme Court's approval. I continued to sit on the Board as the rules were implemented and tested. (See the lawsuit, Verner v. Colorado Supreme Court, page 2 of Section IV.) The legal education requirements have had a direct influence on the caliber of attorneys practicing in Colorado.

I also sat as a judicial representative on a legislative subcommittee which studied and recommended changes on the grand jury law. The committee consisted of district attorneys, defense attorneys and legislators. As a result of the committee's recommendations, reform legislation was passed effecting grand jury proceedings in Colorado.

One of the primary responsibilities as a United States Magistrate is the duty of a settlement facilitator. Pursuant to Rule 16, the discovery of a case is developed to produce meaningful settlement discussions and to reduce discovery costs until settlement has been exhausted. The use of Magistrates in the scheduling of discovery and settlement discussions reduce the number of cases set on the trial docket and settlement of cases just before trial. I have successfully facilitated settlement in the majority of cases assigned to me. The cases vary from complicated multiparty antitrust suits and class actions to simple negligence personal injury cases. An example of such suits are as follows:

The Mountain States Beet Growers Marketing Association, a Colorado cooperative marketing association, et al. v. The Great Western Sugar Co. Case No.82-Z-1942
and

Orville Pratt, et al. v. Hunt International Resources Corporation, a Delaware corp., et al. Case No. 83-Z-1993
Four State Beet Growers action against GW Sugar and Hunt International Resources.

CF&I Steel Corporation, a Colorado corp. v. Mitsui & Co. (U.S.A.), Inc., a New York corp. Case No. 82-Z-1269
Antitrust action for dumping steel.

Braudis v. American Motors and Jeep Corporation
Case No. 86-K-1418
Products liability.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   I have none.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these area of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I have been a judge for over twelve years. I have no business or personal conflicts of interest. If there would appear to be any appearance of impropriety or if brought to my attention that there may be a conflict or appearance of impropriety, I would review the Code of Judicial Conduct for United States Judges, discuss the issue immediately with the Chief Judge and recuse myself where it is appropriate.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

   I have taught and intend to continue teaching as a Lecturer in Law at the University of Denver Law School. I find teaching to be intellectually rewarding and a method of hopefully improving the quality of new lawyers.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more.

   See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail.

   Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the compaign, including the candidate, dates of the campaign, your title and responsibilities.

I was a candidate and elected as a city councilman to the Pueblo City Council as noted in question 16. This was a non-political election by the Municipal Charter. I have not held a position or played a role in a political campaign.

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

DONALD E. ABRAM & JENNETTE C. ABRAM

ASSETS	
Cash and in banks	$ 8,900
Securities GENESCO, INC	120
Real Estate owned (home) (1986 appraisal)	165,000
Automobiles (1979 Oldsmobile, 1978 Fiesta, 1978 Ford Van)	3,000
Personal property	20,000
Other Assets Investors Variable Payment Fund (Keogh)	21,000
PERA Vested Retirement	5,400
CSR Amount	15,078
Total Assets	$238,498

LIABILITIES	
Real Estate Mortgage (Home)	$109,009
Note Payable Relative (Faith Cooley)	18,000
U.S. Consolidated Credit Union	2,400
First Card	1,500
Bank Western	1,200
Total liabilities:	$132,109
Net Worth	$106,389
Total Liabilities & Net Worth	$238,498

CONTINGENT LIABILITIES

Guarantor Home loan Faith B. Cooley $ 15,200
Leases: None
Legal claims: None
Provision for Federal income tax: None
Other Special Debt: None

GENERAL INFORMATION

Assets pledged: NONE
Defendant in any suits or legal actions: NO
I have never taken bankruptcy.

INCOME SOURCES FOR 1987 & 1986

1986:	United States Magistrate	$68,400
	University of Denver Law School	1,575
	Cherry Creek School District #5 (Wife)	12,182
1987:	United States Magistrate	71,824
	University of Denver Law School	975
	Cherry Creek School District #5	12,754

SF 278 (Rev. 1/85)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. [illegible]

Page 1

Reporting Status *(Check Appropriate Box)*

☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Agency Use Only:

OGE Use Only:

Date of Appointment, Candidacy, Election or Nomination *(Mo., Day, Yr.)*: 18 FEBRUARY 1988

Termination Date *(If Applicable)* *(Month, Day, Year)*:

Reporting Individual's Name

Last Name: ABRAM

First Name and Middle Initial: DONALD E.

Position for Which Filing

Title of Position: UNITED STATES DISTRICT JUDGE

Department or Agency *(If Applicable)*:

Location of Present Office

Address *(Number, Street, City, State and ZIP Code)*:
UNITED STATES COURTHOUSE C-160
DENVER, CO 80294-3576

Telephone No. *(Include Area Code)*:
(303) 844-6408
FTS 564-6408

Position(s) Held With the Federal Government During the Preceding 12 Months *(If Not Same as Above)*

Title of Position(s) and Date(s) Held: UNITED STATES MAGISTRATE Appointed 24 AUG. 1981

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination: JUDICIARY

Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual: Donald E. Abram

Date *(Month, Day, Year)*: 22 FEBRUARY 1988

Other Review (If desired by agency)

Signature of Other Reviewer:

Date *(Month, Day, Year)*:

Agency Ethics Official's Opinion

The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature of Designated Agency Ethics Official/Reviewing Official:

Date *(Month, Day, Year)*:

Office of Government Ethics Use Only

Signature:

Date *(Month, Day, Year)*:

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Comments of Reviewing Officials *(If additional space is required, use the reverse side of this sheet)*

(Check box if comments are continued on the reverse side) ☐

PREVIOUS EDITION USABLE

278-100

NSN 7540-01-[illegible]

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name		Page Number	Schedule
ABRAM, DONALD E.	**Assets and Income**	1	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the actual amount of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

S or DC	BLOCK A Assets & Income Sources: Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	BLOCK B Valuation of Assets — Category of Value (X): None (or less than $1001)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	BLOCK C Income — Type of Income (X): Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	Category of Amount of Income (X): None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	BLOCK D Transactions Test — If yes, complete Sched. B Part I for those assets (excluding those sold for a loss). YES	NO
Examples:	X Y Z Common				X				X									X								X	
	Doe Jones & Smith, Hometown, USA			X											ptnrshp Income									$50,000			
1	U.S. Consolidated Credit Union		X								X						X										
2	Colorado National Bank of Pueblo (S)			X							X						X										
3	Investors Diversified Service (Keogh)				X				X							X											
4	First Investors High Yield Fund Inc.	X							X							X											
5	Genesco, Inc	X													None	X											
6	University of Denver Law School	X													Teacher Income		X										
7																											
8																											
9																											
10																											

PREVIOUS EDITION USABLE

279-[illegible]

SF 278 (Rev. 1/83)
FPM Chapter 735
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Reporting Individual's Name
ABRAM, DONALD E.

Page Number	2	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☒

S or DC		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example:	XYZ Common	X			2/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. Exclude transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), exclude gifts from relatives and exclude gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☒

S		Source (Name and Address)	Brief Description	Value
	Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 8/15/83	$500
		Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1				
2				
3				
4				
5				
6				

PREVIOUS EDITION USABLE

376-163

SF 278 (Rev. [illegible])
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Page Number	3	Schedule	C

Reporting Individual's Name

ABRAM, DONALD E.

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts:

NONE ☒

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X)				
						$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC Examples:	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
	John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1										
2										
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Hometown, USA	7/78 pinarship agmt.

PREVIOUS EDITION USABLE

SF 278 (Rev. 1/86)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. [illegible]

Page Number	4	Schedule D

Reporting Individual's Name

ABRAM, DONALD E.

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/82
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83
	NATIONAL COUNCIL OF UNITED STATES MAGISTRATES	NON-PROFIT ASSN	TREASURER	6/87	PRESENT
	NATIONAL COUNCIL OF UNITED STATES MAGISTRATES	NON-PROFIT ASSN	DIRECTOR 10th CIRCUIT	6/84	6/87
	UNIVERSITY OF DENVER LAW SCHOOL	EDUCATION	LECTURER IN LAW	1/86	PRESENT

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

PREVIOUS EDITION USABLE

278-108

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantage." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have acted as counsel by court appointment for the indigent during the thirteen years as private counsel. My term as a city councilman and President of the City Council of Pueblo for four years was at the pay of $100 per month. The city of Pueblo was a city of 100,000 and as President of the Council, I devoted as much as 20 to 30 hours a week and maintained my law practice for income to the firm. The $100 per month stipend was to defer a portion of the monthly expenses of councilmen. Besides my public service as a councilman, I served on the boards and as an officer of the following agencies:

Board of Directors, Pueblo Legal Services, Inc., 1974-1975
Board of Directors and Secretary to the Board, Parkview Episcopal Hospital, Board of Trustees, 1974-1975
Board of Directors of the Chamber of Commerce, 1972
Chairman of the Budget Committee and Board of Directors, Pueblo Community Action Agency - OEO - 1970-1971
Chairman of the Pueblo Chamber of Commerce Educational Committee, 1970-1971
Chairman of the Pueblo County School District Planning Committee, 1969-1970
President, Pueblo Naval Reserve Association, 1971-1973
President, Pueblo County Navy League, 1970-1972
President, Pueblo United Fund, 1968
President of Pueblo Goodwill Industries, 1965
Councilman, Pueblo City Council, 1970-1974

Because of the ethical requirements prohibiting a judge's involvement in fund raising, I have since my appointment as a state district judge limited my public involvement to law related activities, teaching in law school and to Presbyterian church related activities. I also speak at schools to children on the state and federal court systems. The law related activities have been:

National Association of United States Magistrates - Board of Directors, 1984 to date; Treasurer, 1987 to date
First Vice President, Colorado Bar Association, 1975-1976
Supreme Court Commission on Legal & Judicial Continuing Legal Education, 1972-1980 (Organizing Commission)
Supreme Court Subcommittee on Reorganization of the State Courts, 1981-1983
Chairman - Juvenile Judges Association of Colorado, 1979-1980

Legislative Subcommittee on Grand Jury Reform, 1978
Legislative Committee Sutdy of Mental Health Care Facilities and Funding, 1981-1982
University of Colorado Law School Alumni Advisory Board, 1980-1983
Lecturer in Law, University of Denver Law School, 1983 to date, teach courses in Juvenile Law, Federal Jurisdiction and Criminal Procedure
Teaching and hearing moot trial cases for NITA and the Regional moot trial cases at Denver Law School

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of policies? If so, list, with dates of membership. What you have done to try to change these policies.

   I do not belong, nor have I belonged to any such organizations to the best of my knowledge.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   Senator Armstrong appointed a Judicial Selection Committee in 1987 to screen and recommend candidates for one District Judgeship in Colorado. The committee consisted of attorneys and laymen. A questionnaire was submitted to the committee. The committee then interviewed candidates. As I understood the process, five names were submitted to Senator Armstrong. Senator Armstrong then submitted three or more of these names to the Justice Department. I was interviewed by the Justice Department along with the other candidates. On December 29, 1987, Robert Miller, the United States Attorney for Colorado withdrew his name from consideration as a United States District Judge. I was informed that my name would be submitted as a nominee to replace Robert Miller's nomination. I have subsequently been interviewed both by the F.B.I. and the ABA committee.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

   No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our forefathers in establishing the Constitution created an equalateral form of government. Each of the three legs has its own unique duties and responsibilities which were not to be encroached upon by the others. On the other hand, each branch of government was provided powers which effect the duties of another branch in order to insure the maintenance on the equalateral triangle. A review of history establishes that legs of the triangle are not always equal. Strong Presidents have pushed the boundries of power as have strong leaders in Congress and the judiciary. When this has occurred, the balancing mechanisms created by the Constitution become activated bringing the triangle back into balance. Two hundred years of experience have established the Constitutional checks and balances work.

The Judicial branch at times has been perceived as exceeding its authority by Congress and the President. Through corrective legislation, appointments and confirmations, the President and Congress can bring the relationship of the branches back into balance.

I have personal experience of working within the Legislative branch both as an employee in the Iowa State Senate and as an elected city councilman. The elected official continually is listening to the needs and demands of the public and adjusting legislation to meet the needs of the public. It is this interaction that makes the Legislative branch responsible for setting public policy. Federal judges are insulated from the continually fluctuating public opinion. The Constitution intended that litigants would have a stable forum to hear disputes without the pressures of political influence. Judges are to apply the existing law to each case thereby providing an equitable and consistent forum for justice. It is a system of law based upon precedent and where a litigant, before he files the lawsuit, can reasonably rely on the law that will be applied. Rule 11 of the Federal Rules of Procedure requires the litigant to have a factual and legal basis for filing or raising legal issues in a suit. The litigants must be able to rely on the judge applying the law to the individual case.

I have served as a state district judge and a United States Magistrate for nearly thirteen years. I have found by treating each case individually and ruling promptly, both the counsel and the litigants leave the court feeling that the judicial system is fair and equitable.

In my experience as a judge, I have found that long-term administrative supervision by the court is not sufficient or beneficial for the litigants or the court system. Judges have neither the staff, time or training to be managers of large corporations or governmental institutions. The law and the Civil Rules of Procedure provide litigants with methods of enforcing a well written detailed order that is final at the time judgment is entered. When I have been assigned the responsibility as a Magistrate to supervise a class action order, I have met with the parties to finalize the closing of court supervision as quickly as possible.

AMERICAN BAR ASSOCIATION

Standing Committee on
Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1400 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
355 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1900
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA
CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS
LIAISON
Sharp Whitmore
2085 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET ABA 461

February 23, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: DONALD E. ABRAM
United States District Court
for the District of Colorado

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Donald E. Abram for appointment as Judge of the United States District Court for the District of Colorado.

A substantial majority of our Committee is of the opinion that Mr. Abram is "Qualified" for this appointment. The minority found him to be Not Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

CHARLES R. BUTLER, JR.

Birth:	March 28, 1940	New York, New York
Legal Residence:	Alabama	
Marital Status:	Married	Jacqueline Warren Butler 2 children
Education:	1958 - 1962	Washington & Lee University B.A. degree
	1961 - 1962	Washington & Lee University School of Law
	1964 - 1966	University of Alabama School of Law LL.B. degree
Bar:	1966	Alabama
Military Service:	1962 - 1964	United States Army
Experience:	1966 - 1969	Hamilton, Denniston, Butler, and Riddick Associate
	1969 - 1970	Assistant Public Defender of Mobile County
	1971 - 1975	District Attorney Mobile County
	1974 - 1975	University of South Alabama Adjunct Professor
	1975 - 1984	Butler & Sullivan Partner
	1984 - present	Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C. Partner
Office:	Post Office Box 1743 Mobile, Alabama 36633 205 432-7517	
Home:	60 Oakland Avenue Mobile, Alabama 36608 205 342-2957	

To be United States District Judge for the Southern District of Alabama

SENATE QUESTIONNAIRE FOR
CHARLES R. BUTLER, JR.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Charles Randolph Butler, Jr.

2. Address: List current place of residence and office address(es).

Home: 60 Oakland Avenue
Mobile, Alabama 36608
Phone: (205) 342-2957

Office: Post Office Box 1743
Mobile, Alabama 36633
or
Suite 1000
First National Building
31 North Royal
Mobile, Alabama 36602
Phone: (205) 432-7517

3. Date and place of birth.

March 28, 1940, New York, New York

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to former Jacqueline Warren on July 13, 1963 in Mobile, Alabama. Occupation: Works for Stanley Ellis, Inc., 2375 Airport Blvd, Mobile, Alabama, in their corporate gifts department.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

College Attended:

Washington & Lee University, Lexington, Virginia September 1958 to June 1962 - Degree Received: BA, Economics.

Law Schools Attended:

Washington & Lee University, Lexington, Virginia
September 1961 to June 1962
(My senior year in college I was enrolled in law school, so when I graduated in 1962 and received my B.A. in Economics I had one year of law school completed.)

University of Alabama School of Law - Tuscaloosa, AL
September 1964 to June 1966 - Degree received L.L.B.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From	To	Name & Address of Employer	Description
6/84	Present	Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C. 10th Floor First National Bldg. Mobile, Alabama 36602 (205) 432-7517	Attorney, Employee
1/75	6/84	Butler & Sullivan 15th Floor First National Bldg. Mobile, Alabama 36602 (205) 432-7517	Attorney, Partner
9/74	5/75	University of South Alabama Political Science Dept. Mobile, Alabama	Adjunct Professor
1/71	1/75	State of Alabama Mobile County D.A.'s Office Mobile County Courthouse Mobile, Alabama	District Attorney of Mobile County
6/70	1/71	Campaigning for Office Mobile, Alabama	Elected D.A.
1/69	6/70	Mobile District Defender Agency	Asst. Public Defender

6/66	1/69	Hamilton, Denniston, Butler & Riddick St. Joseph Street Mobile, Alabama	Attorney, Associate
9/64	6/66	U. of Ala School of Law University, AL	Law Student
9/62	8/64	United States Army Ft. Chaffee Ft. Smith, AR	Batallion Ammunition Officer

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. Commissioned Second Lieutenant on June 8, 1962 in the U.S. Army Artillery. Received active duty orders September 14th, 1962. Served until honorable discharge as a 1st Lieutenant on August 25th, 1964. My serial number was 05 219 451 and I am not currently on any active or reserve status.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Outstanding Young Man of the Year, Mobile Junior Chamber of Commerce - 1971

M.O. Beale Scroll of Merit - Awarded by the Mobile Press Register newspaper - 1971

United States Secret Service Director's Award - 1974

Alabama Governor's Water Conservationist of the Year - 1975

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Mobile Bar Association, 1966 to date, Member
Alabama Bar Association, 1966 to date, Member
Alabama Trial Lawyer's Association 1966 to 1984 (dates approximate), Member
National District Attorney's Association, 1971 to 1975, Member
American Bar Association, 1966 to date, Member

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Active Lobbying Organizations

(a) Alabama Wildlife Federation, Conservation, 1970-present, past Director, current member.
(b) Gulf Coast Conservation Association, Conservation, 1982-Present, Director and current member.
(c) Ducks Unlimited, Conservation, 1972-present, Past Mobile Area Chairman, South Alabama Chairman, Alabama State Chairman, and current sponsor.

Other Organizations

(a) Kiwanis Club of Mobile, Civic, 1971-1976, no offices held, member only.
(b) Mobile United, Civic, 1971-1978, no offices held, member only.
(c) Mobile County Wildlife & Conservation Assoc., Conservation, 1968-Present, past Vice-President, President, Director and current member.
(d) Volunteer Mobile, Civic, 1978-1979, past Director.
(e) Leadership Mobile, Civic, 1980-1983, past Member.
(f) O.O.D., Social, 1972-present, Honorary Member (Inactive)
(g) O.O.M., Social, 1972-present, Honorary Member, (Inactive)
(h) Comic Cowboys, Social, 1975-present, Member, (Inactive)
(i) Santa Claus Society, Social, 1972-1980, Past Member.
(j) K.O.R., Social, 1972-1978, past Member.
(k) Athelstan Club, Social, 1966-present, Member.
(l) Country Club of Mobile, Social, 1966-present, Member.
(m) UMS Preparatory School Alumni Association, School, 1975-Present, past President and current Member

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Admitted to the following courts:

(a) 13th Judicial Circuit (Mobile County, Alabama)- 1966

(b) U.S. District Court for the Southern District of Alabama, Southern Division - 1966

(c) Supreme Court of Alabama - 1966

(d) Supreme Court of the United States - 1972

(e) Eleventh Circuit Court of Appeals - 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical examination was April 4, 1988 administered by Dr. Stephen G. Lauten, 266 S. McGregor Avenue, Mobile, Alabama 36608; phone number (205) 342-7111.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Appointed Assistant District (Public) Defender of Mobile County in January of 1969 and served to June of 1970.

Elected District Attorney of Mobile County, Alabama in November of 1970. Served from January 1971 to January 1975.

I was an unsuccessful candidate for a State-at-Large Delegate for Senator Bob Dole to the 1988 Republican National Convention, in the March 8, 1988 "Super Tuesday" primary election.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

Upon graduation from law school in June of 1966 I was employed as an associate with the firm of Hamilton, Denniston, Butler, and Riddick. The current address of the successor of this firm is Post Office Box 1743, Mobile, Alabama 36633. (The successor firm is the professional corporation of which I am now a shareholder, Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C.). My practice was primarily bank collection work and admiralty work, along with a mixture of general civil work, which I did until January of 1969 when I took what was originally intended to be a leave of absence, to become an assistant public defender with the Mobile District Defender Agency. The Mobile Bar Association was instrumental in obtaining funding for this agency from The Ford Foundation to provide for the defense of indigents accused of crimes. I was one of three lawyers who handled these cases as public defenders. The agency was dissolved many years ago, although the two other former public defenders are still available: Wayne Loudermilch, Chief Public Defender, Post Office Box 22, Point Clear, Alabama 36564, (205) 928-2095 and Judge Robert Harper, Lee County Justice Center, Opelika, Alabama 36801, (205) 749-7141. In my capacity as an assistant public defender, I handled numerous criminal cases, both capital and non-capital beginning in the lower courts such as the General

Sessions Court of Mobile County and various municipal courts throughout Mobile County, on to the Circuit Court of Mobile, from arrest and preliminary hearing through trial preparation and trial, to sentencing and appeals to the Alabama Court of Criminal Appeals and the Alabama Supreme Court.

I stayed in this position from January of 1969 until June of 1970 when I took a leave of absence to qualify as a candidate for the office of District Attorney of the Thirteenth Judicial Circuit (Mobile County). I was elected to this office in November of 1970 and assumed the duties of District Attorney with offices in the Mobile County Courthouse in January of 1971. As District Attorney, I hired and organized the staff, coordinated the functions of the D.A.'s Office with the various law enforcement agencies in Mobile County, restructured the grand jury so as to have it meet on a monthly basis (rather than twice a year as previously done) in order to give accused criminals a speedy trial, even though Alabama had no speedy trial act, investigated and prepared criminal cases for presentment to the grand jury and trial, and prosecuted as chief trial counsel criminal felony cases in the Circuit Courts of Mobile. During part of that time, I taught classes at night from 1974 to 1975 as an adjunct professor at the University of South Alabama in Mobile. The courses were Arrests, Search and Seizure and Criminal Procedure. These courses were offered in the Criminal Justice Program under the direction of Dr. Robert V. Barrow, 5522 Nassau Drive, Mobile, Alabama 36608, phone number (205) 342-1458.

I did not run for re-election after serving my four (4) year term as District Attorney, and in January of 1975 formed the law firm of Butler & Sullivan with one of my current partners, Joseph C. Sullivan, Jr. We had a general civil practice until our merger with the Hamilton, Butler, Riddick, Tarlton & Allen law firm in June of 1984. The firm name was then changed to Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C. and we continue to enjoy a general civil practice.

I have not served as a clerk to any judge nor have I ever practiced alone.

b. 1. What has been the general character of your law practice, dividing it into periods with dates, if its character has changed over the years?

From June of 1966 to January of 1969 as an associate with Hamilton, Butler, Denniston and Riddick, I handled mostly non-jury bank collection cases before the judges of the General Sessions Court of Mobile (now known as the District Court). I was also actively involved in assisting partners in the firm with on-board ship investigations of admiralty claims and cases and researching and writing briefs in contested admiralty cases pending in the United States District Court for the Southern District of Alabama. I tried several jury cases and non-jury cases in the Circuit Court of Mobile during that period.

From January of 1969 to January of 1975 my practice was almost exclusively criminal trial work either as an assistant public defender (Jan. 1969 to June of 1970) or as District Attorney (Jan. 1971 to Jan. 1975). This included the defense and trial of persons charged with burglary, larceny, receiving and concealing stolen property, robbery, rape, possession and sale of various drugs, and murder; and the prosecution and trial of persons charged with these same offenses and others.

From 1975 to the present I have been engaged in a general civil practice. Over the past four years my practice has begun to become more specialized in the area of real estate, oil and gas, and litigation of those matters, as well as corporate and estate planning matters. Prior to that I handled all types of cases, including domestic relations (divorce and child custody trials), civil litigation as both a plaintiff's lawyer and a defense lawyer and a variety of types of actions (wrongful death actions, personal injury, contracts and agreements) and a small amount of criminal matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients are:

(a) First American Title Insurance Company and the handling for them the issuance of title insurance policies as agents; and the defense of claims arising under their policies, and instituting third party actions for recovery of breach of warranty of title;

(b) Independent oil and gas producers, developers, and the owner of a large refinery in Mobile (GAMXX Energy, Inc.). Also litigation and handling of claims and disputes arising out of drilling, producing and the ownership of oil, gas and mineral rights and other property rights;

(c) Individuals and businesses, handling estate planning matters, probate of estates, contract matters and disputes, litigation of tort and contract actions, and general business advice and some divorce matters for a few select clients.

I have not specialized since leaving the District Attorney's office in 1975, except in the past three to four years I have begun to become more involved in real estate and oil and gas litigation matters than in any other type of practice.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in Court, fairly often from 1966 to January of 1969, and from January of 1969 to January of 1975 I was in Court almost daily, and since 1975 I have appeared in Court regularly with fluctuations depending on the types of matters handled. Within the past two years I have had what I consider an unusually large number of cases resolved favorably on either Motion for Summary Judgment after full discovery or settled prior to trial.

2. Over the past twenty-two years the percentage of these appearances was in:

(a) Federal Courts;
10% in Federal Courts
(b) State Courts of Record;
75% in State Courts
(c) other courts.
15% in Probate, State District Courts.

3. Over the past twenty-two years the percentage of my litigation was:

(a) civil;
65%
(b) criminal.
35%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the four courts of record in Mobile, Probate Court, Circuit Court, the Domestic Relations Division of the Circuit Court, and the Federal District Court I have tried to verdict or judgment:

(1) In Probate Court, approximately 15 of which I was sole counsel.

(2) In Domestic Relations Court, approximately 25 of which I was sole counsel.

(3) In Circuit Court, approximately 50 of which I was sole counsel on 45, and associate or co-counsel on the remaining 5.

(4) In Federal District Court, approximately 5 of which I was sole counsel.

5. What percentage of these trials was:
(a) jury; 60%
(b) non-jury. 40%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;

(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

(c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) I defended John M. Kiel for the capital murder of Edward Hoskins, Sr. during a jewelry store robbery at which numerous eye witnesses identified Kiel as the perpetrator of this particularly cold-blooded shooting. This case was tried in the Circuit Court of Mobile for four days before a jury from March 30 to April 2, 1970 ending in a verdict of conviction for first degree murder for which Kiel received a life sentence. (Docket No. 21003). Judge Hubert P. Robertson, now retired, presided (Home Address: 617 Tuthill Lane, Mobile, Alabama 36608; phone number (205) 342-5689). I conducted all the pre-trial investigation and interviewing of witnesses, both defense and prosecution, and I examined and cross-examined all of the witnesses (approximately 20) at trial. I filed and argued thirty two separate pre-trial motions (to suppress, to produce evidence, to produce grand jury testimony of witnesses, to produce statements of witnesses, etc.) and numerous motions during the course of the trial. I made opening and closing arguments to the jury and prepared all of the jury charges. By thoroughly cross-examining prosecution witnesses and utilizing impeachment of the line-up procedures used to have Kiel identified, and by thoroughly preparing the case, I was able to raise enough reasonable doubt in the jurors' mind so that at the end of the trial Kiel was not convicted of capital murder.

The significance of this case was that Kiel was not convicted of capital murder, when the facts appeared to clearly have justified it, and as an assistant public defender I began to seriously question the ability of the then District Attorney, Carl Booth, to effectively administer the important office of District Attorney of Mobile County. Soon thereafter I made the decision to qualify and run against Mr. Booth for the office of District Attorney. The case was prosecuted by Mr. Booth's nephew, Donald Brutkiewicz, 305 Van Antwerp Building, Mobile, Alabama 36602, Phone number (205) 433-1866.

(2) The March 1971 prosecution of Arenza Thigpen for first degree murder was one of the first cases I tried in the Circuit Court of Mobile as District Attorney representing the State of Alabama. (Docket No. 23088). Thigpen was the alleged "hitman" for Nobel Beasley, who was at that time alleged to have headed a major drug ring. The victim of the murder was a rival drug dealer. Beasley, who had been indicted with Thigpen, had been acquitted of the murder charge just prior to my taking office in a highly publicized trial handled by the former District Attorney's Office. The conviction of Thigpen was therefore made all the more difficult, but was all the more important if the public's confidence was to be restored in Mobile's criminal justice system.

The trial lasted five days from March 30 to April 3, 1971 in which I acted as Chief Counsel along with then Assistant District Attorney Larry U. Sims, Post Office Box 2767, Mobile, Alabama 36652; phone number (205) 432-5521. We shared the responsibility about equally of examining and cross-examining witnesses in preparation of the case for trial and arguing the case to the jury. Thigpen was defended by Vernon Z. Crawford (now deceased) and the case was tried before Judge Hubert P. Robertson, Jr., now retired, (Home Address: 167 Tuthill Lane, Mobile, Alabama 36608). He was convicted by a jury of second degree murder and sentenced to life in the penitentiary. The conviction was subsequently upheld on appeal (Thigpen v. State, 49 Ala. App. 233, 270 So.2d 666, 1972). I did not participate in the appeal as in Alabama at that time appeals in criminal cases were then almost exclusively handled by the Attorney General's Office from Montgomery.

The significance of the case, in addition to restoring the public's confidence in the District Attorney's Office, was that there was a serious challenge raised by defense counsel to the makeup of the Mobile County jury venire. I was able to develop evidence and present it on a hearing on the motion to quash the venire that the Mobile County Jury Commission did not systematically exclude any class of citizens from its jury rolls.

(3) The first major public corruption case I prosecuted as chief counsel was of Buddy Herman Mathis, a contractor, who had conspired with the assistant administrator of the Mobile County School Board to create several hundred thousand dollars worth of false kitchen renovation contracts. Mathis was indicted for obtaining money by false pretenses. He was defended by Robert P. Denniston, 1495 University Blvd., Mobile, Alabama 36616; phone number (205) 344-7744 and Alvin M. Binder, of Jackson, Mississippi, further address unknown. Judge William D. Bolling (retired: Home Address: 3 Buerger Road, Mobile, Alabama 36608; phone number (205) 342-6301) presided over this 3 day trial from June 23 to June 25, 1971 in the Circuit Court of Mobile after which the jury convicted Mathis, and he was sentenced to eight years in the penitentiary. (Docket No. 22694). I handled about 90% of the examination and cross-examination of approximately 25 witnesses along with the Assistant District Attorney who helped me in the trial, Robert C. Campbell, 3763 Professional Parkway, Mobile, Alabama 36609; phone number (205) 344-7241. I made opening and closing arguments to the jury and handled any motions that were presented by the defense counsel during the course of the trial. Mathis' conviction was appealed to the Court of Criminal Appeals and was affirmed (Mathis v. State, 52 Ala. App. 674, 296 So.2d 760, 1973).

The significance of this case was that it was the first major public corruption trial in Mobile in my career and one of the first in Mobile's recent history. There was also a serious defense challenge to whether any of the venire had fixed opinions about Mathis' guilt from pre-trial publicity and all the venire was extensively examined and cross-examined on voir dire resulting in the selection of an impartial jury.

(4) In 1969 Carlos Miguel Hernandez was arrested by Mobile Police with a carload of several hundred pounds of marijuana, the largest seizure of marijuana in the State of Alabama at that time. He was indicted by the Mobile County Grand Jury, to which I had presented the case, for possession and transportation of marijuana. I prosecuted him in October of 1971 as sole counsel before Judge Hubert P. Robertson in the Circuit Court of Mobile. (Docket No. 23946). I handled the State's case in chief as well as the cross-examination of the defense witnesses. I made opening and closing arguments and prepared the State's jury charges and introduced over forty exhibits into evidence.

Hernandez was defended by Thomas M. Haas, 255 St. Francis Street, Mobile, Alabama 36602, phone number (205) 432-0457. According to Judge Harris, writing for the majority of the Court of Criminal Appeals, "what started out to be a simple case ... ripened into a courtroom battle of major dimensions, all to the credit of our adversary system ... (with the) ... defense raising every conceivable issue". I researched and argued successfully against these various issues and motions and after a three day jury trial from October 26 to October 28, 1971 Hernandez was convicted. His conviction was ultimately upheld on appeal (Hernandez v. State, 50 Ala. App. 558,280 So.2d 831, 1973). I did not participate in the appeal as that was handled by the Alabama Attorney General's Office.

(5) In March of 1973 I acted as sole counsel in the Mobile County Circuit Court five day trial of Mobile attorney Reginald H. Stephens who was charged with receiving and concealing stolen property. He was tried before a jury from March 26 to March 30, 1973 presided over by Judge William D. Bolling and defended by Barry Hess, 301 St. Joseph Street, Post Office Box 1706, Mobile, Alabama 36633, phone number (205) 432-4546. (Docket No. 27688). I examined all of the State's witnesses, cross-examined the Defendant and his witnesses, made all jury arguments and prepared the State's jury charges. Stephens was convicted on the charge, but the conviction was ultimately reversed on appeal due to the introduction of evidence of similar crimes which the Alabama Court of Criminal Appeals held was inadmissible. (Stephens v. State, 53 Ala. App. 371, 300 So.2d 414, 1974). I did not participate in this appeal as that was handled by the Attorney General's Office in Montgomery.

The significance of this case was that as a lawyer, I found it personally abhorrent to have to indict and prosecute one of my fellow attorneys because of the adverse publicity and effect it would have on the legal community. I did not, however, shirk my responsibility as a public servant charged with prosecuting all crimes brought to my attention. As a judge, I am sure I will be faced with ruling against my personal feelings, but believe that this case shows that I will be capable of ruling according to the facts and applicable law.

(6) The final significant litigated matter in which I participated as District Attorney in the Circuit Court of Mobile was the prosecution in February of 1974 for embezzlement by the now deceased manager of the Mobile Municipal Auditorium, Walter C. "Buddy" Clewis. (Docket No. 30410). I did not act as Chief Counsel in this case, although I participated in the trial with my Assistant District Attorney, Charles A. Graddick, 3120 Hemon Road, Montgomery, Alabama 36106, phone number (205) 265-0221 who acted as Chief Counsel. I assisted him in preparing the case for trial, prepared our witnesses, helped with legal research, jury charges and argument to the Court on various motions and objections raised by the Defense. The case

was tried to a jury before Judge Joseph M. Hocklander (now deceased) for 3 days from February 19 to February 21, 1974 and Clewis was acquitted. He was successfully defended by M. A. "Bubba" Marsal, 200 Church Street, Post Office Box 1746, Mobile, Alabama 36633, Phone number (205) 432-6685.

The significance of this trial is that although Clewis was acquitted, the trial exposed the opportunity for corruption at the auditorium. In December of 1985, after several years of investigation by the FBI in Mobile and the U.S. Attorney's Office and other state authorities, the manager of the auditorium, George Juzang, and his assistant, David Gwin, testified in Federal District Court in Mobile against the then mayor of the City of Mobile, Gary Greenough, concerning their participation in an extortion scheme with the mayor. Greenough was convicted on 15 counts of extortion and mail fraud based on charges arising out of mismanagement and misappropriation of auditorium funds similar to the type of charge for which Clewis had been acquitted. The ultimate irony of this was that Juzang and Gwin testified in the Federal trial that Clewis had been embezzling funds for years prior to his death.

(7) The defense of Sid Lyner in the United States District Court for the Southern District of Alabama on Federal Conspiracy to defraud the United States charges in 1976. (Docket No. 75-84). This case was tried before Judge W. Brevard Hand beginning on March 3rd and ended in a conviction on March 5, 1976. This case was prosecuted by William "Ruddy" Favre (now deceased), as Assistant U.S. Attorney under U.S. Attorney Jeff[illegible] Sessions, 113 St. Joseph St., Mobile, Alabama 36601, phone number (205) 690-2845. This was my first significant Federal criminal jury trial, in which I was involved as co-counsel with Thomas M. Haas, 255 St. Francis Street, Mobile, Alabama 36602, phone number (205) 432-0457, who represented a co-defendant and Ian Gaston, 210 Van Antwerp Building, Post Office Box 1253, Mobile, Alabama 36633, phone number (205) 433-5585 who represented another co-defendant. This trial exposed me for the first time to the practical application of the Federal Rules of Criminal Procedure. I examined and cross-examined the government's witnesses on issues affecting my client and made opening and closing statements and arguments on my client's behalf. My client, upon his conviction received probation and did not appeal.

(8) The Three Mile Creek Flood Litigation was handled by my partner, Joseph C. Sullivan, Jr., and myself as co-counsel wherein we represented approximately 100 families whose homes and property had been inundated and damaged by severe flooding conditions along a drainage creek maintained by the City of Mobile, during the floods of April and May of 1980 and May of

1981. We filed suit in the Circuit Court of Mobile County against the City of Mobile on the theory that the City owed a duty to our clients to protect their homes from this flooding and had been negligent in not properly maintaining the creek. (Docket No. CV-82-500041). The City was defended by Davis D. Carr, Post Office Box 123, Mobile, Alabama 36601, phone number (205) 432-5511, along with numerous other counsel acting for various insurance companies and other defendants and co-counsel representing other Plaintiffs. A list of these counsel is attached as an exhibit to this questionnaire and because they are so numerous addresses have not been furnished, but will be upon request.

One of the key issues of the case was whether the City's liability under Alabama's limitation of municipal liability statute (1975 Code of Alabama, §11-93-2) was for each "occurrence" of damage to each of the Plaintiffs' property or whether each flood event of April and May of 1980 and May of 1981 was itself an "occurrence". Were it the latter, the City's total liability to all of our 100 clients would have been only $100,000 for each of the three floods. Were it the former, each Plaintiff would have been entitled to prove up to $100,000 in damages to his property for each time it was flooded. After several years of pre-trial preparation, interviewing witnesses, taking depositions, pre-trial motions argued, legal research, and preparation of our expert witness for trial, Judge George H. Wright, Jr. (now deceased), isolated a single preliminary issue to be tried before him in the Circuit Court of Mobile. On March 16, 1983 I participated in this hearing as co-counsel with Joseph C. Sullivan, Jr., Post Office Box 1743, Mobile, Alabama 36633, phone number (205) 432-7517 and in the critical cross-examination of the City's expert witness, Dr. Aaron Williams. Judge Wright subsequently ruled on May 6, 1983 in our clients' favor that we could recover up to $100,000 in damages for each of them. Shortly thereafter the Defendants settled with all but four of our clients for $1,000,000.00.

The significance of this case is that it was the first major, complex, multi-party civil litigation in which I was involved. I believe we were able to keep the issues and the interests of all of our clients in focus and perspective throughout the years of handling this matter, and that from this experience I have gained significant insight into the handling of complex litigation as a judge.

(9) Southern Fish & Oyster Company, et al v. John McMillan, Commissioner of the Alabama Conservation Department. I was appointed Special Assistant Attorney General by the Alabama Attorney General's Office to represent the Commissioner

of the Department of Conservation, John McMillan, in this injunction action filed against him in the Circuit Court of Mobile by a group of commercial fish wholesalers seeking to prohibit the enforcement of Department of Conservation regulations which prohibited the use of monofilament gill nets at certain times of the year in coastal waters of the State of Alabama. (Docket No. CV-82-500156). The basic thrust of the Complaint was that the regulations violated the Equal Protection and Due Process clauses of the United States and Alabama Constitutions.

The case was tried before Judge Robert L. Byrd, Jr. on May 7th, 1982 and on May 14th, 1982. The Plaintiffs were represented by Herbert P. Feibelman, Jr. (now deceased) and his partner, William S. Shulman, Post Office Box 2082, Mobile, Alabama 36652, phone number (205) 433-1597. I acted as sole lead counsel and prepared the case for trial, gathered the evidence and exhibits, interviewed the witnesses (10), researched the legal issues, drafted responsive pleadings, and represented the Commissioner at the two day trial examining and cross-examining the witnesses and presenting legal arguments. I also prepared and did all of the research for the Commissioner's brief in support of our motion to deny the Complaint for Injunctive Relief.

Judge Byrd denied both the Application for Temporary Restraining Order and the Bill for Permanent Injunction on May 21st, 1982. The Plaintiffs appealed the case to the Alabama Supreme Court but subsequently on October 21st, 1982, dismissed their appeal. (Case No. 81-829).

The significance of this case is twofold. First of all, it was a serious challenge to the authority of the Commissioner of the Department of Conservation to regulate two species of saltwater fish, speckled trout and red fish, that the evidence indicated had been threatened by overharvesting. There had been a long and bitterly fought battle before the Conservation Department Advisory Board prior to their recommending that the Commissioner promulgate these regulations, where both commercial and sport fishermen presented evidence, arguments, lobbied, and in some cases almost came to blows. Secondly, the brief which I filed with the Court addressed, researched and argued a number of constitutional issues.

(10) Getty Oil Company v. Dorothy V. Wilkie Hayes, et al is an oil and gas boundary line dispute wherein I acted as chief trial counsel for the adverse claimants who were claiming title to a disputed strip of approximately 5.6 acres of land, under which lay valuable producing minerals. The estimated value of these minerals and the revenues generated from them is

$500,000.00. There were numerous other counsel who represented various other adverse claimant defendants and they are attached to a list at the conclusion of this question as an exhibit. The chief counsel who participated the most for the other adverse claimants was Edward B. McDonough, Jr., Post Office Box 1943, Mobile, Alabama 36633, phone number (205) 432-3296. I was primarily responsible for preparing the case for trial for all the claimants, including the taking of depositions, the filing of discovery motions, the interviewing of witnesses and the orchestration of the trial and issues to be proved and briefed. I handled the examination of all but several of the witnesses, (approximately 12) and the cross-examination of the Defendant's witnesses (approximately 5). The record title owners of the minerals in question were represented by Christopher G. Hume, III, Suite 200, Five Dauphin Street, Mobile, Alabama 36601, phone number (205) 432-1811. The case was tried in the Circuit Court of Mobile before Honorable Judge Edward B. McDermott on June 30th, 1986 and recessed until August 4th, 1986 and resulted in a final decree on November 19th, 1987 ruling in favor of the clients I represented as well as all the other adverse claimants. (Docket No. CV-84-000420).

The significance of the case represents an example of my ability to take a fairly complex oil and gas matter and reduce it to its simplest terms, so that a Judge who had candidly admitted from the bench that he had very limited knowledge of oil and gas matters was able to clearly see from the evidence as presented and the issues as briefed that the adverse claimants were entitled to prevail.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities I have pursued are, first of all, those cases listed in question 18 above. However, I view perhaps the most important legal activity I have been involved in as the role I played in completely restructuring and revitalizing the Mobile County District Attorney's Office when I took office in January of 1975.

The former District Attorney had been in office 27 years and had completely failed to keep himself or his staff abreast of current criminal and constitutional law or modern criminal practice. As a result, their record of convictions was poor and their public image worse. Law enforcement morale in Mobile County was at an all time low ebb as little support was given to the hard work of the law enforcement agencies in Mobile.

As an assistant public defender prior to 1975, I had seen and learned enough about the criminal justice system to see that this vital link in the system was not working. So I ran for District Attorney, was elected, and began to make the changes necessary to correct the situation. I hired young and aggressive prosecutors, I streamlined the handling of the docket, I tightened up the old system that had allowed plea bargaining on all but the most notable cases, I instituted classes for the police department to train them in search and seizure procedures, Miranda warnings, lineup procedures, and the gathering of evidence. One of the most important innovations I instituted was to cause the Mobile County Grand Jury to meet monthly, rather than twice a year as my predecessor had done, in order to eliminate the tremendous backlog of cases awaiting indictment and trial. This had the desired effect of allowing indigents who could not afford even the most minimal bail, an opportunity to have a speedy trial, even though at that time Alabama had no speedy trial act.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List all sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a severance pay agreement with my law firm, Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C. that will provide payment to me of one-half of my regular salary ($75,000.00) for one and a half years after I sever my relationship with the firm, if appointed to the Federal District Court bench.

I also have a vested interest in the Hamilton, Butler, Riddick, Tarlton & Sullivan, P.C. profit sharing plan which, upon my severance from the firm, will be paid out to me and rolled over into an IRA account in my name only. The balance as of March 31, 1988 was $38,414.37.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of

litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would fully disclose the conflict, if one should arise, and follow the dictates of the applicable Judicial Ethics rules and guidelines to eliminate the problem.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

1987

Wages	$141,695.00
Directors' Fees	2,000.00
Taxable Interest	1,673.00
Tax Exempt Interest	9,393.00
Dividends	5,590.00
Capital Gains	65,221.00
Royalties	3,682.00
Tax Refund	1,085.00
Total	$230,339.00

1988 (January 1st to March 31st)

Wages	$ 19,074.00
Directors' Fees	800.00
Interest (Estimated)	300.00
Tax Exempt Interest	3,497.00
Dividends	2,137.00
Capital Gains	19,145.00
Royalties	1,156.00
Total	$ 46,109.00

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I campaigned for and was elected District Attorney of Mobile County, Alabama in November of 1970. I took a leave of absence from the Mobile County District Defender's Office in June of 1970 and campaigned all over Mobile County.

Beginning in the summer of 1985 and on through the June of 1986, Democratic Party run-off election between Attorney General Charles Graddick and Lt. Governor Bill Baxley, I helped raise money for the Graddick campaign and was a member of his finance committee. On several occasions I participated with the candidate in handshaking at various businesses in Mobile County. I held no title in the campaign.

I was an unsuccessful candidate as an Alabama State-At-Large Delegate for Senator Bob Dole to the 1988 Republican National Convention, in the March 8, 1988 "Super Tuesday" primary election. I appeared on one TV talk show in Mobile with representatives of other candidates, but did no other active campaigning other than asking friends and acquaintances to vote for Senator Dole.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In January of 1969 I left the private practice of law to become an assistant public defender with the Mobile County District Defender Office to defend indigents accused of crime. Although I was paid for this work, it was at a reduced rate from which I had been earning and I worked almost twice the hours defending the indigent until June of 1970. Since then, I have made it my practice to assist those who cannot afford a lawyer on a fairly regular basis. I have prepared wills, at no charge for Sam Salter (deceased) and Adeline Weaver, both of who were unable to afford legal services.

In addition, I have represented Adeline Weaver in various disputes regarding her (now deceased) husband's doctor and hospital bills, and her eligibility for Medicare and Medicaide benefits.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that individiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I have never joined an organization because of any motives of ill will or animosity toward any race, sex, or religion. When I grew up in Mobile my parents were members of the Country Club of Mobile and when my father died, I succeeded to his membership. I continue to belong primarily for the health club facilities, although I only use them occasionally. At the present time the club has no black members, and although I support the inclusion of black members in the club as a matter of principle, the club is such an unimportant aspect of my life that I have not devoted much time to it or become involved in its administration in any way. I have never proposed anyone for membership, black or white; nor have I ever served as an officer, director or member of any of the club's committees. I also belong to the Athelstan Club of Mobile, which is a downtown eating club. I use its health facilities during the week. There are currently no black or women members, but I am confident this will change within the next year, a move I very much support. I also belong and have belonged to a number of organizations that are involved in Mobile's Mardi Gras celebration: The OOM (1972 to present, currently inactive), OOD (1972 to present, currently inactive), Comic Cowboys (1975 to present, currently inactive), KOR (1972 to 1978) and Santa Claus Society (1972 to 1980). These clubs do not have racial membership restrictions, and although I do not believe there are black members, my understanding is that for reasons having to do with the nature and history of the Mardi Gras celebration, no blacks have applied for membership in these clubs, preferring to maintain their own associations. My personal involvement in these organizations has lapsed over the years and since I no longer attend the parades and balls they sponsor, I have not been active in urging them to change this situation. I have, of course, belonged to many other organizations that have women and black members, and am confident that in both my professional and personal life, my conduct demonstrates that my attitude towards minorities and women is utterly free from bias.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If

so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not a selection commission in this jurisdiction.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The United States Constitution clearly separates the legislative, executive and judicial powers of our federal government. Just as the executive branch cannot legislate, neither can the legislative branch carry out the functions of the judiciary. Nor, it would seem to necessarily follow, can the judicial branch legislate, or "make law", or attempt by judicial order to impose executive authority on the people. The criticism that is leveled at "judicial activism" often arises when a court is confronted with a single plaintiff whose cause of action attempts to voice a much broader current social concern or wrong. When judges look to solve the social problem rather than resolve the grievance the plaintiff presents, the danger is inherent that the judge will stretch the proper bounds of judicial restraint and attempt to render a decision that cures the bigger social wrong. Certainly the legitimate result of many valid judicial decisions is to cure social wrongs, (e.g., ruling in a case brought by an individual plaintiff that its a denial of due process to require an uneducated person to take a difficult voter qualification test); but the judiciary is not equipped nor designed, nor was it ever intended to do more than to construe whether a certain law or act is violative of the meaning of any given constitutional provision or guarantee. The judiciary should scrupulously try to avoid placing itself in the position of an executive branch of the government carrying out its own judicially-legislated mandates. One of the ways it can do this is to be less inclined to loosen standing and ripeness requirements.

The imposition of broader affirmative duties upon governments and society should more properly be the result of a process of deliberative and exhaustive legislative review and executive implementation. Then, if a case or controversy arises under the application or administration of a law or executive order, judicial review using applicable constitutional law and decisions is appropriate. A judge should strive to limit his role to supplement, by interpretation of laws and the Constitution, not supplant action that is legitimately legislative or executive in scope.

AFFIDAVIT

I, CHARLES R. BUTLER, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 29, 1988
(DATE)

Charles R. Butler, Jr.
CHARLES R. BUTLER, JR.

Sworn and subscribed to before me on this

the 29th day of April, 1988.

NOTARY PUBLIC, STATE OF ALABAMA,
STATE AT LARGE

My commission expires: 11-1-91

LIST OF COUNSEL IN

THREE MILE CREEK FLOOD LITIGATION
Case Number: CV-82-500041

William Brigham
Davis Carr
William Jones, III
J. Harley McDonald, Jr.
Joseph Boswell
John Richardson
Warren Herlong
Danner Frazer
George Moore
Thomas S. Rue
Dan McCleave
M. A. Marsal
Lucien Gillis
James E. Moore
Marr & Friedlander
Dennis Knizley
Vaughan Drinkard, Jr.
Wesley Pipes
Robert H. Smith
Donald Banks
Allan R. Chason
Donald Friedlander
Robert Gottlieb, Jr.
Ben H. Kilborn
William M. Lyon, Jr.
Wade Perry, Jr.
Holmes Whiddon
James C. Johnston
Chris Hume, III
Robert Kendall
Edward McDonough
L. A. Marsal

Jerry McDowell
Horace Moon
Bert Nettles
E. Graham Gibbons
Herbert Feibelman, Jr.
Gregory McAtee
Huie, Fernambucq & Stewart
James Phillips
Palughi & Gudac
Melvin W. Brunson
John Parker
Sam Stockman
Robert Clute, Jr.
Thomas J. Stein
Joel Danley
W. Gregory Hughes
John J. Pilgrim
Joseph M. Allen, Jr.
Irvin Grodsky
David Broome
Michael L. Fees
Frank Kruse
Theodore Hall
Ed Lasseter
Ed Massey
William A. Scott, Jr.
Mylan Engel
Cynthia Cargile
George Tonsmeire, Jr.
Mark Everest
James R. Cooley
Charles C. Partin

List of Attorneys in
Getty Oil Co. v. Dorothy V. Wilie Hayes, et al
Case Number: CV-84-000420

Conrad Armbrecht

Mark Everest

Mayer Perloff

Chrisopher Hume

Ben Harris

Charles Parrott

Young Dempsey

Sage Lyons,

W. James Hill

Hal Bailey

Edward Dean

Edwin J. Curran, Jr.

Edward Turner

M. P. Edmondson, Jr.

Alan Christian

Robert Edington

Ronald Farley

Alex Lankford

Edward McDonough

McCleod & Locklin

CONFIDENTIAL FINANCIAL STATEMENT

NET WORTH

OF CHARLES R. BUTLER, JR.

(AS OF MARCH 31, 1988)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	28	590	00
U.S. Government securities—add schedule	10	000	00
Listed securities—add schedule	284	254	00
Unlisted securities—add schedule			
Accounts and notes receivable:			
Due from relatives and friends			
Due from others			
Doubtful			
Real estate owned—add schedule	642	350	00
Real estate mortgages receivable			
Autos and other personal property	217	000	00
Cash value—life insurance	6	592	00
Other assets—itemize:			
Mobile Country Club Bond	10	000	00
IRA	9	630	00
Pension Plan Account	38	420	00
Total assets	1,246	836	00

LIABILITIES			
Notes payable to banks—secured	165	600	00
Notes payable to banks—unsecured			
Notes payable to relatives			
Notes payable to others			
Accounts and bills due			
Unpaid income tax			
Other unpaid tax and interest			
Real estate mortgages payable—add schedule			
Chattel mortgages and other liens payable			
Other debts—itemize:			
MasterCard	2	000	00
GMAC	2	260	00
Total liabilities	169	860	00
Net worth	1,076	976	00
Total liabilities and net worth	1,246	836	00

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor	None		
On leases or contracts	None		
Legal Claims	None		
Provision for Federal Income Tax	None		
Other special debt	None		

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	No		
Are you defendant in any suits or legal actions?	No		
Have you ever taken bankruptcy?	No		

U.S. GOVERNMENT SECURITIES SCHEDULE

Treasury Note

U.S. Treasury Notes 13.25% due 4-15-88	10,000

LISTED SECURITIES SCHEDULE

STOCKS

Company	Number of Shares	Market Value as of March 31, 1988
General Electric	800	$32,260
Exxon Corporation	1000	$42,000
Mobil Oil Corporation	650	$28,763
Dow Chemical Company	300	$24,450
Chase Manhattan Bank	302	$ 7,606
Chevron Corporation	400	$18,600
Union Electric Company	240	$ 5,580
AmSouth Bancorporation	17	$ 423
Coastal International Corp.	20	$ 100
New Southland National Ins. Co.	25	$ 100
	Total	$159,882

BONDS

Description	Face Value
IDB West Jefferson 7.375% Ser. B. (Alabama Power Company Miller Plant Project) dtd. 6-1-78 due 6-1-2008	$10,000
Bd. of Education Covington Co., Al. 6.25% Tax Ant. Wrt. dtd. 3-1-78 due 9-1-97	15,000
County Board of Education Bibb Co., Al. 5.70% Special Tax School Wrt. dtd. 9-1-77 due 9-1-97	10,000
Birmingham-Jefferson Civic Ctr. Auth. 6.70% Ref. & Cap. Out. Spec. Tax Bd. dtd. 5-1-78 due 9-1-2005	10,000
IDB West Jefferson, Al. 7.20% Poll. Cont. Ser. A (Alabama Power Co. Miller Plant Proj.) dtd. 2-1-77 due 2-1-2007	5,000
Tuscaloosa, AL 4.80% Water & Sewer dtd. 7-1-67 due 7-1-2005	10,000
Public Hospital Board Lauderdale Co. & City of Florence, AL 6.50% dtd. 5-1-77 due 7-1-94	10,000
IDB Birmingham, AL 6.20% dtd. 4-1-78 due 7-1-2008	15,000

Jefferson Co., Al. 6.30% Sanitary Sewer dtd. 6-1-78 due 3-1-99	10,000
Dothan Al. 5.70% GO dtd. 4-1-78 due 9-1-96	15,000
IDB Mobile, Tax Exempt Municipal Bond	5,000
Total	$115,000

TAX EXEMPT FUND

Description	Face Value
E. F. Hutton Tax Exempt Fund, #10, 12 units	$ 9,372

REAL ESTATE OWNED SCHEDULE

(a) Homeplace, 60 Oakland Avenue, Mobile, Alabama 36608; value $450,000.00 (owned jointly with wife Jacqueline).

(b) Vacation Home, Rural Route, Blacksher, (Baldwin County) Alabama; value $125,000.00 (owned jointly with wife Jacqueline).

(c) Mineral & Royalty rights:

(i) Producing Minerals in which I own either a working interest or royalty interest:

	Value
Hatters Pond Field, Mobile County, AL	$10,000
Chunchula Field, Mobile County, AL	5,000
South Foley Field, Baldwin County, AL	1,000
Smacko, Ltd. Mobile County Leases	100
TOTAL	$16,100

(ii) Non-Producing Mineral or Royalty Interests:

Sec. 33, T2S, R3W, Mobile County, AL	1,000
Weeks Bay, Baldwin County, AL	2,500
Paul Kaiser 6-13 #1 Unit, Baldwin Co., AL	1,000
East Hatters Pond, Mobile Co., AL	500
McClure Minerals, Mobile Co., AL	15,000
TOTAL	$20,000

(d) My wife, Jacqueline W. Butler, owns an undivided 25% interest with her brothers, Claude, Malcolm and Joe Warren, in a vacation home located on Dauphin Island, Mobile County, Alabama (Lot Eight, Block "F" of Royal Lagoons Subdivision). Her 25% interest is worth $33,750.

AMERICAN BAR ASSOCIATION
Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112
FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101
SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004
THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103
FOURTH CIRCUIT
James A. Howard, Sr.
1400 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510
FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215
SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611
EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501
NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101
Samuel L. Williams
40th Floor
355 South Grand Avenue
Los Angeles, CA 90071
TENTH CIRCUIT
James A. Clark
Suite 1100
303 East 17th Avenue
Denver, CO 80203
ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101
DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006
FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006
BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2005 Gird Road
Fallbrook, CA 92028
STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABANET: ABA 461

April 28, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: CHARLES R. BUTLER, JR.
United States District Court
for the Southern District of Alabama

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Charles R. Butler, Jr. for appointment as Judge of the United States District Court for the Southern District of Alabama.

A substantial majority of our Committee is of the opinion that Mr. Butler is "Well Qualified" for this appointment. The minority found him to be Qualified.

Sincerely yours,

Harold R. Tyler, Jr.
Chairman

cc: All Committee Members

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1836-1888)
THOMAS A. HAMILTON (1844-1887)
J. GAILLARD HAMILTON (1868-1946)
THOMAS A. HAMILTON (1896-1962)
CHARLES R. BUTLER (1891-1962)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 13, 1988

Honorable Joseph R. Biden, Jr.
United States Senate
Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington D.C. 20510
Attn: Steve Metalitz

Re: CHARLES R. BUTLER, JR.
Nominee for United States District Court for
the Southern District of Alabama

Dear Senator Biden:

Enclosed please find copies of letters of resignation I have this date submitted to the Country Club of Mobile and the Athelstan Club. As my answer to my "Questionnaire for Judicial Nomination", Part III, GENERAL, Question No. 2, indicates I have not maintained an active role in either of these organizations. I do, however, believe that in order to avoid even the appearance of impropriety, that my resignation will serve the public's best interest should my nomination to the District Court bench be confirmed by the Senate. I am not an active member in any of the Mardi Gras associations to which I belonged as I stopped paying dues years ago after I served the minimum number of years as an active dues paying member. My name is simply carried on the roles as an honorary member, which means if I ever wanted to reactivate my membership, I could. I have no intention of ever reactivating my membership in any of these organizations, and have not attended any of their meetings or other functions for a number of years.

I also attach an addendum to Question No. 3 of Part III of my Questionnaire, as well as three writing samples for the Committee's consideration.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
Enclosures

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN

A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
J. GAILLARD HAMILTON ([illegible])
THOMAS A. HAMILTON ([illegible])
CHARLES R. BUTLER ([illegible])

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 13, 1988

Mr. Ben Tom Roberts, President
Country Club of Mobile
4101 Wimbledon Drive
Mobile, Alabama 36608

Dear Ben Tom:

I am hereby resigning my membership in the Country Club of Mobile.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1830-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1880-1956)
THOMAS A. HAMILTON (1928-1962)
CHARLES R. BUTLER (1881-1962)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 13, 1988

Mr. Maurice D. Bell, Jr.
Athelstan Club
170 St. Francis
Mobile, Alabama 36602

Dear Maurice:

I am hereby resigning my membership in the Athelstan Club.

Very truly yours,

Charles R. Butler, Jr.

CRBJr:aen

ADDENDUM TO QUESTIONNAIRE FOR JUDICIAL NOMINEES

III. GENERAL (PUBLIC)

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not a selection commission in this jurisdiction. During the course of confirmation proceedings of the United States District Judge Emmett R. Cox to be elevated to the 11th Circuit Court of Appeals, I was approached by the Chief Judge of the United States District Court for the Southern District of Alabama and asked to consider the vacancy which would be created if Judge Cox were elevated to the 11th Circuit. After consulting with my family, friends and law partners, I then spoke with the congressman from this district, H.L. "Sonny" Callahan, and told him of my interest in seeking the position. He told me he would submit my name to the Justice Department for consideration by them. I was subsequently interviewed in Washington by Stephen J. Markman, Assistant Attorney General and members of his staff and thereafter notified by President Reagan that he had selected my name to be submitted to the Senate for consideration.

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOTETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)
THOMAS A. HAMILTON (1928-1982)
CHARLES R. BUTLER (1951-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 20, 1988

Steve Metalitz, Esq.
United States Senate
Committee on the Judiciary
Room SD-224, Dirksen Senate Office Building
Washington D.C. 20510

Dear Steve:

After talking with Andy Rainey in your office today, I do not want there to be any question about my continuing membership in any of the Mardi Gras societies, so I am submitting my letter of resignation from the Comic Cowboys together with two letters to the OOMs and OODs requesting that my name be removed from the honorary roles.

As I explained to Andy the presence of my name on the honorary roles of OODs and OOMs came about as a result of my active membership terminating in the early 1980's. Since my presence on the honorary membership list does give the appearance of continuing membership, I feel it best that I submit these two letters in order to remove any question about my membership in those organizations.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen
Enclosures

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
HANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1889-1956)
THOMAS A. HAMILTON (1928-1962)
CHARLES R. BUTLER (1951-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 20, 1988

O.O.M.
Post Office Box 668
Mobile, Alabama 36601

Gentlemen:

I hereby submit my resignation as an honorary member in the O.O.M.

Very truly yours,

CRB Jr

Charles R. Butler, Jr.

CRBJR:aen

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1899-1956)
THOMAS A. HAMILTON (1928-1962)
CHARLES R. BUTLER (1951-1982)
CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4278

June 20, 1988

Mr. Ed Meyercord, President
Comic Cowboys
Post Office Box 104
Mobile, Alabama 36601

Dear Mr. Meyercord:

I hereby resign as a member of the Comic Cowboys effective this date.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen

HAMILTON, BUTLER, RIDDICK, TARLTON & SULLIVAN
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELLORS AT LAW
TENTH FLOOR FIRST NATIONAL BUILDING
P. O. BOX 1743
MOBILE, ALABAMA
36633
TELEPHONE (205) 432-7517

HARRY H. RIDDICK
JAMES W. TARLTON, III
CHARLES R. BUTLER, JR.
JOSEPH C. SULLIVAN, JR.
JOHN W. DONALD, JR.
FERRELL S. ANDERS
DAVID A. BOYETT, III
PATRICK H. SULLIVAN
J. DAVID BRADY, JR.
MANLEY L. CUMMINS, III
RICHARD E. CORRIGAN

PETER HAMILTON (1838-1888)
THOMAS A. HAMILTON (1844-1897)
J. GAILLARD HAMILTON (1889-1956)
THOMAS A. HAMILTON (1928-1962)
CHARLES R. BUTLER (1921-1982)

CABLE ADDRESS: HAMILTONS
TELEX: 782007
TELECOPIER (205) 432-4276

June 20, 1988

O.O.D.
Post Office Box 16938
Mobile, Alabama 36616

Gentlemen:

I hereby submit my resignation as an honorary member in the O.O.D.

Very truly yours,

Charles R. Butler, Jr.

CRBJR:aen

KARL S. FORESTER

Birth:	May 2, 1940	Harlan, Kentucky
Legal Residence:	Kentucky	
Marital Status:	Married	Tarasa Travis Forester 2 children
Education:	1958 - 1962	University of Kentucky B.A. degree
	1963 - 1966	University of Kentucky College of Law J.D. degree
Bar:	1966	Kentucky
Experience:	1966 - 1968	Eugene Gross, Esq. Associate
	1968 - 1975	Gross & Forester Partner
	1975 - present	Forester, Forester, Buttermore & Turner, P.S.C. Partner
Office:	First Street P.O. Box 935 Harlan, Kentucky 40831 606 573-7000	
Home:	Woodland Hills Harlan, Kentucky 40831	

To be United States District Judge for the Eastern District of Kentucky

ANSWERS TO QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

ANSWER: Karl Spillman Forester.

2. Address: List current place of residence and office address(es).

ANSWER: Home address - Woodland Hills, Harlan, Kentucky, 40831. Office address (mailing address) - Forester, Forester, Buttermore & Turner, P.S.C., First Street, P.O. Box 935, Harlan, Kentucky, 40831.

3. Date and place of birth.

ANSWER: May 2, 1940, Harlan, Kentucky.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

ANSWER: I am married to Tarasa Travis Forester, who is not employed but who donates hundreds of hours annually to civic endeavors.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

ANSWER: University of Kentucky 1958-1962, BA (1962); University of Kentucky College of Law 1963-1966, JD (1966).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

ANSWER: 1962-1963 - Harlan County Board of Education (teacher); 1966-1974 - Goss & Forester Law Offices; 1975-present - Forester, Forester, Buttermore & Turner, P.S.C. Law Offices.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

ANSWER: NONE

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

ANSWER: University of Kentucky College of Law - Moot Court Board

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

ANSWER: Harlan County Bar Association (miscellaneous offices - President-1968); Kentucky Bar Association (Mineral Law Program Committee); American Bar Association; American Judicature Society; Association of Trial Lawyers of America.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

ANSWER: Business: Kentucky Bar Association, American Bar Association, American Judicature Society, Association of Trial Lawyers of America. Social: University of Kentucky Alumni Association, The LaFayette Club, Harlan Country Club.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

ANSWER: State Courts, Commonwealth of Kentucky, 1966; United States District Court for the Eastern District of Kentucky, 1966; United States Supreme Court, January 12, 1976.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

ANSWER: NONE

13. Health: What is the present state of your health? List the date of your last physical examination.

ANSWER: Excellent. March 2, 1988.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

ANSWER: NONE

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

ANSWER: NOT APPLICABLE

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

ANSWER: NONE

17. **Legal Career:**

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

ANSWER: After graduation from law school in 1966, I became associated with Eugene Goss in the general practice of law at Harlan, Kentucky. In 1968, Mr. Goss and I formed a partnership under the name of Goss & Forester. Thereafter in 1975, I formed the law firm of Forester & Forester, which was the predecessor to the firm of Forester, Forester, Buttermore & Turner, P.S.C., where I continue to practice.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER: At the present time I am primarily engaged in representing companies involved in the mining industry in legal matters relating to the following areas of practice: corporate, minerals, NLRB, mine safety, environmental, worker relations, labor, acquisitions, financial and workers' compensation matters. In addition thereto, I am engaged in a general civil practice representing both plaintiffs and defendants, and a rather limited criminal practice.

I am general counsel for several small to medium sized coal companies engaged in normal activities related to that representation. In the last five years I have been involved in the purchase and sale of miscellaneous businesses involving over 200 million dollars. Since 1984, I have been general counsel for the Kentucky Coal Producers' Self-Insurance Fund, a group self-insured workers' compensation fund under KRS 342.350, with annual revenues of approximately 25 million dollars. Until my resignation in 1985, I was, for six years, attorney for the Harlan County Board of Education.

I represent clients in civil and administrative matters involving personal injury, workers' compensation, domestic relations, real estate, estates, labor, social security and black lung. In administrative matters I have appeared extensively before The National Labor Relations

Board; The Federal Mine Safety & Health Administration (MSHA); The Office of Surface Mining (OSM); The Social Security Administration; The Federal Department of Labor (Black Lung); The Federal Mediation & Conciliation Service; The Kentucky Workers' Compensation Board; The Kentucky Department of Mines and Minerals; and The Kentucky Cabinet for Natural Resources and Environmental Protection. In the past I have represented numerous defendants in criminal cases, although I have drastically limited my **practice in that area over the past few years.**

I have acted as the independent arbitrator on several matters including one appointment by Eugene Siler, Chief Judge, United States District Court for the Eastern District of Kentucky, as independent arbitrator.

Prior to the last five years I had an extensive trial practice in state and federal courts as well as an extensive administrative agency practice.

My federal practice prior to the last five years involved primarily labor matters involving work stoppage activities. These matters involved seeking to enjoin illegal work stoppages as well as claims for damages and involved engagements in federal courts in both Kentucky and Virginia. In addition as counsel for various coal companies I have acted in an advisory role assisting insurance company counsel in several federal court trials. I have occasionally represented criminal defendants in federal court matters although plea bargaining precluded the necessity for trial.

My state court practice prior to the last five years involved numerous civil and criminal trials, primarily in the Harlan Circuit Court. I represented individuals as well as companies involving personal injury, contracts, domestic relations and real property matters. I have also represented the Progressive Mine Workers of America and The United Mine Workers of America in local matters.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

ANSWER: Frequently.

2. What percentage of these appearances was in:
(a) federal courts - 20%;
(b) state courts of record - 40%;
(c) other courts - 40% (administrative).

3. What percentage of your litigation was:
(a) civil - 90%;
(b) criminal - 10%.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled); indicating whether you were sole counsel, chief counsel, or associate counsel.

ANSWER: 75 to 100.

5. What percentage of these trials was:
(a) jury - 95%;
(b) non-jury - 5%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

ANSWER: See Attachment 1.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

ANSWER: In the representation of clients, both plaintiffs and defendants, I have been involved in many litigated matters which were settled prior to trial. To document or list such matters, which probably number 50 to 100, would not be possible because of time constraints and because of disposal of old files.

Also see answer to question III.(1) relating to serving the disadvantaged.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

ANSWER: I have approximately $300,000 vested in pension plans and a profit sharing plan which I anticipate withdrawing and placing in my IRA. My interest in Forester, Forester, Buttermore & Turner, P.S.C., will be sold to the remaining shareholders, however, there has been no discussion in regard to the same.

I am aware of no other future receipts, etc.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

ANSWER: I know of no potential conflicts of interest. For an undetermined period of time, I would feel compelled to recuse from matters involving former clients and my law firm. I will, of course, comply with all ethical standards as set out in the American Bar Association Model Code of Professional Responsibility and Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

ANSWER: No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

ANSWER: 1987 - Forester, Forester, Buttermore & Turner, P.S.C. salary and bonus $117,370.71; Prudential-Bache Research Fund $1,700.00; sale of Baxter Travenol stock $3,856.85 (capital gain); sale of Citizens Fidelity Corporation stock $1,617.63 (capital gain); Spencer County, Kentucky and Madison, Indiana, approximately $3,000.00; Foxcroft Associates $9,847.00. 1988 - Forester, Forester, Buttermore & Turner, P.S.C. salary $28,749.72.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

ANSWER: Attached as Attachment 2.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER: No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

ANSWER: Prior to the funding of a public defender (criminal) program in the Commonwealth of Kentucky, individual attorneys were called upon to represent on a pro bono basis indigent defendants in criminal cases. Over a period of years, I have represented from 50 to 100 of these defendants and have probably been involved in 25 to 50 trials relating to same. Although most of these activities occurred more than ten years ago, and the listing of specific instances and amounts of time devoted to each would not be possible, I am confident that many hundreds of hours were devoted to this representation.

In 1977, citizens of Harlan County, Kentucky, suffered devastating losses as a result of a flood event which was said to be a 100 year occurrence. Since thousands of individuals sustained loss of property, our office volunteered to offer free legal advice to those who were in need of same, and we set up a booth at the disaster services center. The Kentucky Disaster and Emergency Services awarded this office its certificate of merit recognizing our activities. Attorneys from this office were on call over ten hours a day for a period of approximately two weeks, and talked with hundreds of individuals and devoted numerous hours to that endeavor.

Attorneys in this office have represented social security disability claimants and those from whom the Secretary of Health, Eduation and Welfare sought return of overpayments on many occasions with little or no fee being charged. Because of a confidential relationship, it would not be appropriate to list specific instances.

I have represented individuals who were otherwise unable to pay in matters involving creditors rights and domestic relations.

While serving the disadvantaged is a responsibility of all practicing attorneys, I have noticed that many times those in the very low income brackets are otherwise represented by legal services and other public advocates, while low to moderate income individuals, while not "disadvantaged" are unable to employ attorneys at normal rates for services rendered. For this reason, we do not reject clients because of inability to pay, but charge on the basis of ability to pay. In this manner, we find that we can best serve those who are otherwise unable to afford legal services.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

ANSWER: No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER: I was one of three selected for nomination by the Federal Judicial Selection Commission of Kentucky from approximately 27 applicants. The Commission is composed of nine members; three appointed by Senator Ford; three appointed by Senator McConnell; and three appointed by the Kentucky Bar Association.

Subsequent to the action of the Kentucky Federal Judicial Selection Commission, the three selected were requested by the United States Department of Justice Office of Legal Policy to appear in Washington, D.C. for interviews. I was personally interviewed by Seth Leibman and Steve Matthews of the Office of Legal Policy. I was telephonically interviewed by Stephen J. Markman, who is an Assistant Attorney General.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

ANSWER: No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and

academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

ANSWER: While I do not believe it to be appropriate for a judicial nominee to comment specifically in regard to the popular and academic criticism "that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government", some general thoughts relating to these criticisms are probably appropriate.

Assuming for the purposes of argument that many of the criticisms are valid, the underlying basis of the criticism seems to be that the judicial branch oftentimes is placed in the untenable position of having all answers to all questions. Moreover, occasionally the judicial branch places itself in the position of being a super legislature which, it is said, is inappropriate since the judiciary is not amenable to the political process. On the other hand, many times the determination of whether or not a matter is constitutionally proscribed may be criticized as judicial legislation, which criticism is oftentimes invalid.

Finally, it would appear to me that any criticism can be allayed by the judiciary considering each matter on merit alone and without the avowed purpose of curing societal ills.

AFFIDAVIT

I, Karl S. Forester, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

This 1st day of April, 1988.

Karl S. Forester

STATE OF KENTUCKY

COUNTY OF HARLAN

SUBSCRIBED AND SWORN TO before me by KARL S. FORESTER this 1st day of April, 1988.

Notary Public., Ky. State at Large

My Commission Expires:

[illegible]

ATTACHMENT 1

CLARK WOOLUM, EXECUTOR OF THE ESTATE OF NELLIE WOOLUM V. EASTOVER MINING COMPANY AND EASTOVER LAND COMPANY - United States District Court for the Eastern District of Kentucky at London, Civil Action No. 82-11.

The above-styled case was brought by the Executor of the Estate of Nellie Woolum, who was killed as the result of a coal refuse impoundment failure which caused hundreds of thousands of yards of coal refuse to cover her home as well as the neighborhood in which she lived. Results of an autopsy indicated that Mrs. Woolum had suffocated as the result of being covered by the refuse material. The impoundment failure occurred at approximately 3:00 a.m. in the morning and completely destroyed Mrs. Woolum's home. Her body was found several days later approximately 100 feet from her home. It was located in 8 to 10 feet of coal mine refuse and was located by the use of a long probe.

Approximately $225,000 in compensatory damages was paid to the estate, and the case was tried on the issue of punitive damages. The Plaintiff had originally demanded $12 million as punitive damages, but later reduced the demand to $5 million.

The trial commenced on July 28, 1983, and ended on August 6, 1983. My role as general counsel for the Defendant companies was to assist counsel employed by the insurance company.

We, as counsel for the Defendants, knew that the Plaintiff's proof would consist of evidence relating to prior problems the Plaintiff's decedent had with coal refuse escaping from the Defendants' property onto the property of the Plaintiff. On one other occasion, her yard had been covered with refuse as the result of heavy rain washing the refuse onto her property. She had filed a law suit in regard to that occurrence, and I had defended the action. I had been victorious in that case, limiting the Plaintiff to a nominal recovery. During those proceedings, the Plaintiff had voiced her fears that the large dam located above her property would some day fail, which failure would result or likely result in her death. Additionally, we knew that Mine Safety Health Administration officials would testify that the impoundment had not been constructed according to the plans submitted by the Defendants to that agency.

We had offered proof that the impoundment had failed through no fault of the Defendants.

The jury returned after twenty minutes and awarded the Plaintiff $5 million as punitive damages. I am relatively sure that had the Plaintiff not reduced the punitive damages demand, that the award would have been $12 million.

Although the case was later settled, it was particularly significant to me, if not to others who could learn from the experience. First, counsel for the Defendants did not have access to insurance company officials with substantial settlement authority. During the course of the trial, the Plaintiff's counsel had indicated that the case could be settled by the payment of $600,000 or so. We had recommended to the insurance company through a relatively low level adjuster that the settlement should be accepted. We did not receive authority to settle the case, and my co-counsel advised me that he believed that no employee of the insurance company with substantial authority was available at the time the offer was made. Consequently, the case went to the jury. As the result of this trial, I learned that counsel, in dealing with his client, must be an advocate with his client just as he is an advocate in the courtroom. I believe that had we insisted on discussing the settlement offer with someone in the hierarchy of the claims section of the insurance company that the matter might have been resolved.

a. The dates of the trial were as set out above.

b. The case was tried in the United States District Court for the Eastern District of Kentucky, and the judge was Honorable Eugene Siler, Jr., United States District Court for the Eastern District of Kentucky, London Division, London, Kentucky, 40741, (606) 878-6822.

c. Co-counsel was Glenn W. Denham, Esq., 1914 East Cumberland Avenue, Middlesboro, Kentucky, 40965, (606) 248-2765.

Opposing counsel was Eugene Goss, Esq., Central Street, Harlan, Kentucky, 40831, (606) 573-1234.

GLEN SHEPHERD V. GENE MASTIN, Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Civil Action No. 81-Ci-683.

The above-styled case was an election contest suit involving the 1981 City of Cumberland mayoral election. Gene Mastin had defeated Glen Shepherd in the race by one vote. Shepherd filed suit alleging that Mastin had engaged in corrupt election practices, and that he should be declared the winner as a result thereof. Mastin countersued and alleged that Shepherd had engaged in corrupt election practices. The issues involved were which candidate received the most legal votes and whether absentee ballots should be counted even though election officers failed to comply with the Kentucky absentee ballot statute.

The trial involved the testimony of approximately 100 witnesses and lasted eight days from December 17, 1981 to January 4, 1982.

Of particular significance to me was the distasteful chore of subpoenaing numerous voters in the election who were alleged to have been ineligible to vote by virtue of either living outside the City of Cumberland or otherwise ineligible, and requiring those witnesses, under oath, to testify as to who each had voted for during the election. Although I had a client to represent, I was concerned that the sanctity of the ballot box had been violated by compelling those witnesses to reveal to the Court and to all courtroom observers the name of the person for whom that witness voted.

I represented the Defendant-Contestee who was victorious in the contest suit. The Judgment of the Harlan Circuit Court was affirmed by an unpublished opinion of the Commonwealth of Kentucky Court of Appeals rendered on July 9, 1982. Discretionary review was denied by the Supreme Court of Kentucky.

I was lead counsel in the case.

a. The dates of the trial are as set out above.

b. The case was tried in the Harlan Circuit Court before the Honorable Sidney B. Douglass, Judge, 120 S. Second Street, Harlan, Kentucky, 40831, (606) 573-1985.

c. Co-counsel was Johnnie L. Turner, Esq. and Susan C. Lawson, Esq. of Forester, Forester, Buttermore & Turner, P.S.C., P.O. Box 935, Harlan, Kentucky, 40831, (606) 573-7000.

Opposing counsel was Eugene Goss, Esq., Central Street, Harlan, Kentucky, 40831, (606) 573-1234; and Arthur L. Brooks, Esq., 183 North Upper Street, Lexington, Kentucky, 40507, (606) 233-3366.

PATRICIA P. BENNETT V. MACKS SUPERMARKETS, INC., Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Civil Action No. 4807.

The above-styled case was an action filed by a minority shareholder against a corporation seeking inspection of the books and records of the corporation in an effort to determine whether or not the officers of the corporation had acted improperly. The corporation refused to allow inspection of the corporate books and records alleging that the request for inspection was made by the shareholder for an improper purpose.

Of particular significance was the fact that the case involved a question of first impression in Kentucky, the question related to the burden of proof. That is, did the shareholder have the burden to establish that her purpose was proper or did the corporation have the burden of establishing that the request for inspection was made for an improper purpose.

I represented the Defendant corporation. The Harlan Circuit Court found in favor of the Plaintiff shareholder. The Commonwealth of Kentucky Court of Appeals reversed the decision of the Harlan Circuit Court.

The decision of the Court of Appeals was rendered on January 5, 1979, and ordered not to be published. The decision of the Court of Appeals was reversed by the Supreme Court of Kentucky on October 30, 1979. The case is reported at 602 S.W.2d 143.

a. The case was tried on December 19, 1977.

b. The case was tried in the Harlan Circuit Court before the Honorable Sidney E. Douglass, Judge, 121 S. Second Street, Harlan, Kentucky, 40831, (606) 573-1985.

c. There was no co-counsel.

Counsel for the opposing party were James S. Greene, Jr., Esq., Central Street, Harlan, Kentucky, 40831, (606) 573-1340; and Rucker Todd, Citizens Plaza, Louisville, Kentucky, 40202, (502) 589-5400.

EASTOVER MINING COMPANY V. PEABODY COAL COMPANY,

Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Civil Action No. 2630. Removed to United States District Court for the Eastern District of Kentucky, CA No. 75-299.

The above-styled case was an action upon a contract seeking to recover advanced coal royalties paid by the Plaintiff to the Defendant. The Plaintiff alleged that it had explored the seam of coal leased to it and that no mineable coal was located. The Plaintiff had paid $50,000 as advanced royalties to the Defendant. The Defendant argued that the sums advanced were consideration for the contract rather than advanced royalties and, therefore, that the monies were not refundable even though the coal seam did not contain mineable or merchantable coal.

I represented the Plaintiff and the United States District Court for the Eastern District of Kentucky granted summary judgment for my client. No appeal was taken.

Although in the scheme of things this case would not be of particular significance other than to my client, it does point out the fact that appropriate discovery may occasionally result in the granting of summary judgment. I had taken the deposition of the Defendant's local land agent, and he admitted that the $50,000 paid was indeed an advance royalty payment and that if no mineable and merchantable coal was to be found on the leasehold, then the money should be returned. Also of significance to me was the fact that the Court held that a contract is to be construed more strictly against its preparer. In this instance, the lease contract had been prepared by attorneys for Peabody Coal Company. Since the rendering of this decision, I have always preferred to take the position of a contract reviewer rather than a contract preparer.

a. There was no trial since the case was decided on motion for summary judgment.

b. The case was decided by the Honorable Eugene Siler, Jr., Judge, United States District Court for the Eastern District of Kentucky, London Division, London, Kentucky, 40741, (606) 878-6822.

c. There was no co-counsel.

Counsel for the opposing party was Maxwell P. Barret, Jr., Stoll, Keenan & Park, First Security Plaza, Lexington, Kentucky, 40507, (606) 231-3000.

COMMONWEALTH OF KENTUCKY V. MAGGIE BAILEY, Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Criminal Action No. 81-CR-109.

The above-styled case was a criminal matter wherein my client was tried and convicted in the Harlan Circuit Court for the offense of trafficking in alcoholic beverages in a dry territory, third offense, a felony. In Kentucky, a violation of local option laws, normally a misdemeanor, is enhanced by prior local option law convictions. Conviction of a third offense violation is a felony punishable by up to two years imprisonment. In this case, the trial court allowed a previous plea of guilty to the offense of attempt to commit a felony (alcohol related) to enhance a subsequent local option law violation conviction.

The matter was appealed to the Commonwealth of Kentucky Court of Appeals upon the issue of whether a plea of guilty to the offense of attempting to commit an alcohol related felony could be used to enhance a subsequent local option law violation penalty. The Court of Appeals reversed the conviction and held that the conviction for attempt to commit a felony may not be considered for purposes of penalty enhancement.

Although the opinion of the Court of Appeals was ordered to be published (October 12, 1984), I am unable through a search of the proper indices to find the citation.

The case was of particular significance to my client and myself because I had thoroughly researched the matter prior to trial and had a case squarely in point. Unfortunately, I was unable to convince the trial court that it acted erroneously in giving the instruction. However, I had no difficulty in convincing the Court of Appeals that the trial court had acted erroneously. Although I believe that it would have been probable that a post trial arrangement could have been worked out resulting in my client serving a reduced sentence, both my client and I felt that we were right and that under our system of jurisprudence, being right will prevail in the end. In this instance, it did.

a. The case was tried on March 8, 1983.

b. The case was tried in the Harlan Circuit Court before the Honorable Sidney B. Douglass, Judge, 120 S. Second Street, Harlan, Kentucky, 40831, (606) 573-1988.

c. There was no co-counsel.

Counsel for the Commonwealth of Kentucky was Ron Johnson, Esq., P.O. Drawer L, Harlan, Kentucky, 40831, (606) 573-2348.

ROBERT THOMAS V. SURF POOLS, INC., Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Civil Action No. 78-012.

The above-styled case was an action brought for personal injuries (quadriplegia) sustained when the Plaintiff, a young man 17 years of age, slipped on the edge of a swimming pool and struck his head on the bottom breaking his neck. The pool was owned by a municipality and operated by a local civic club at the time of the accident. Joe Savage and I represented the Plaintiff.

We were able to effectuate a policy limits settlement with the municipality and sought additional damages from the company which designed and constructed the pool. We argued that the Defendant contractor was negligent per se in failing to comply with the statutory requirements of an on-sight engineer as well as being negligent in failing to adequately design and construct the pool.

The trial commenced on October 30, 1978, and ended on November 6, 1978, at which time the jury found for the Defendant.

Of particular significance to me was the fact that the Defendant offered $150,000.00 to settle the case, and that offer remained open throughout the trial. Although the settlement, together with the amount actually paid by the municipality to settle would have resulted in a handsome fee for myself and co-counsel, very little would have been accomplished for our client, who is destined to remain in a wheelchair for the rest of his life. This was the most crushing defeat to date in my legal career. Had we known that the Plaintiff would continue his college education and eventually graduate from law school at the University of Kentucky and return to Harlan to practice his profession rather than being a ward of the state as we thought he might be when we rejected the offer of settlement, then we might have made a different recommendation to the Plaintiff.

I, along with Mr. Savage, prepared pleadings, engaged in discovery, questioned and cross examined witnesses and assisted in briefing on appeal.

a. The dates of the trial are as set out above.

b. The case was tried in the Harlan Circuit Court before the Honorable Sidney E. Douglass, Judge, 120 S. Second Street, Harlan, Kentucky, 40831, (606) 573-1985.

c. Co-counsel was Joe C. Savage, Esq., 300 West Short Street, Lexington, Kentucky, 40507, (606) 254-9351.

Opposing counsel was William A. Watson, Esq., U.S. Post Office Building, Middlesboro, Kentucky, 40965, (606) 248-8034.

ULAS MURPHY V. SECRETARY OF HEALTH AND HUMAN SERVICES - Social Security Administrative Matter.

The above-captioned administrative matter before the Social Security Administration involved a claim by Ulas Murphy for Social Security Disability Benefits based upon total and permanent disability as a result of coal workers' pneumoconiosis, hypertension, arthritis, sinus problems and back problems.

The claimant was born in 1919, has a fourth grade education, has never held a job requiring reading and writing skills, has no vocational training, and has always worked at hard manual labor. Mr. Murphy's claim was filed shortly after he left underground coal mining in early 1973 as a result of contracting coal workers' pneumoconiosis, and Mr. Murphy alleged that he became disabled on June 25, 1976. His application was initially denied by the Administration and was further denied upon reconsideration. A hearing was held before an Administrative Law Judge, which hearing resulted in a determination adverse to Mr. Murphy. The United States District Court for the Eastern District of Kentucky in Civil Action No. 77-245 affirmed the Administrative Law Judge's decision. Thereafter, the matter was appealed to the United States Court of Appeals for the Sixth Circuit [see Murphy v. Secretary of Health and Human Services, File No. 81-5234]. The Court of Appeals concluded that the Administrative Law Judge failed to apply the Grid under 20 CFR 404.1562 and directed the Secretary of Health and Human Services to apply the Grid to all pending cases to determine the vocational abilities of impaired claimants. The case was reported at 680 F.2d 466.

Upon remand and a de novo hearing before an Administrative Law Judge of the Social Security Administration, the claim was again denied. Thereafter, the Secretary's proposed findings were submitted to the United States District Court, Eastern District of Kentucky, and the Secretary's findings were affirmed. Thereafter, the case was again appealed to the United States Court of Appeals for the Sixth Circuit [see Murphy v. Secretary of Health and Human Services, File No. 86-6013], and by an unpublished opinion rendered on December 1, 1987, the Court of Appeals again reversed the United States District Court's finding and remanded the case to the Secretary to determine the extent of the claimant's environmental restrictions and also directed the Secretary to employ a vocational expert to testify whether such a restriction precludes gainful employment in the nation's economy as a result of the claimant's coal workers' pneumoconiosis and related lung conditions. The matter is presently before the Secretary for determination of Murphy's vocational opportunities in light of his restricted lung condition.

The significance of this case is that it established the use of the Grid on all pending cases in the Sixth Circuit and also established the need of the Social Security Administration to use a vocational consultant to determine the impact of restricted environment upon claimants based upon their individual impairments rather than the arbitrary use of reference materials such as the Dictionary of Occupational Titles to determine the suitability of claimants with certain impairments to vocational opportunities. The undersigned handles several of the hearings before the

Social Security Administration and, along with Rodney E. Buttermore, Jr., Esq. of Forester, Forester, Buttermore & Turner, P.S.C., prepared and handled the appeals before the United States District Court. Alva A. Hollon, Jr., Esq. is employed to handle the appeal of the matter to the Sixth Circuit Court of Appeals.

a. Since there were a number of hearings in regard to this matter over a period of 14 years, no trial date will be set out.

b. The names of the Courts before whom the case was tried are as set out above.

c. Co-counsel were Rodney E. Buttermore, Jr., Esq., Forester, Forester, Buttermore & Turner, P.S.C., P.O. Box 935, Harlan, Kentucky, 40831, (606) 573-7000; and Alva A. Hollon, Jr., Esq., Adams Building, Hazard, Kentucky, 41701, (606) 439-1302.

Opposing counsel were Patrick Molloy, Esq., United States Attorney, P.O. Box 1490, Lexington, Kentucky, 40591, (606) 233-2661; Miles Franklin, Esq., Assistant United States Attorney, P.O. Box 1490, Lexington, Kentucky, 40591, (606) 233-2661; and John S. Osborne, III, Esq., Assistant United States Attorney, P.O. Box 1490, Lexington, Kentucky, 40591, (606) 233-2661.

JAMES G. BURKHART AND BETTY L. BURKHART V. BOARD OF EDUCATION OF HARLAN COUNTY, ET AL, Commonwealth of Kentucky, 26th Judicial District, Harlan Circuit Court, Civil Action No. 80-Ci-539.

The above-styled case was brought by two school teachers who were husband and wife against the Board of Education of Harlan County, Kentucky, the superintendent and several school board members. The Plaintiffs allege, among other things, that they were transferred from their positions at one county high school to another county high school for political reasons in violation of the laws of the Commonwealth of Kentucky. I represented the Defendants along with an associate, Johnnie L. Turner.

The case was tried by the Harlan Circuit Court with the assistance of an advisory jury. The Court adopted the recommendation of the jury that the Plaintiffs were not transferred for political reasons but were transferred for valid administrative reasons. The case was appealed to the Court of Appeals and that portion of the judgment of the trial court relating to the transfer of the Plaintiffs was affirmed. See 649 S.W.2d 855 (Ky.App. 1983).

This case was of particular significance to me because as attorney for the Board of Education, I had great difficulty in convincing the Board members that politics had no place in the operation of our school system. Historically, in the mountains of Kentucky, employees of local school systems were rewarded or punished because of political activity. That is, if an employee supported the right Board members during an election, he was given a "plum" position close to his home; if not, he was transferred as far away from his home as possible. Prior to this case, my advice seemed to fall on deaf ears. Even though we were victorious in regard to the transfers in this case, there was sufficient doubt to create an element of fear in the defendants. For several years after this decision, I had no difficulty convincing the Board members that politics had no place in the operation of a school system.

a. The dates of the trial were from September 8, 1981 through September 18, 1981.

b. The case was tried in the Harlan Circuit Court before the Honorable Sidney E. Douglass, Judge, 120 S. Second Street, Harlan, Kentucky, 40831, (606) 573-1985.

c. Co-counsel was Johnnie L. Turner, Esq. of Forester, Forester, Buttermore & Turner, P.S.C., P.O. Box 935, Harlan, Kentucky, 40831, (606) 573-7000.

Opposing counsel was Jennifer B. Coffman, Esq., 182 North Mill Street, Lexington, Kentucky, 40507, (606) 233-3366.

OPAL F. CROLEY, EXECUTRIX OF THE ESTATE OF JESSE B. CROLEY, DECEASED V. FRED R. LANGLEY AND LARRY E. SMITH, United States District Court, Eastern District of Kentucky, Lexington Division, Civil Action No. 83-37.

This case was tried before Judge Scott Reed in Lexington, Kentucky, for four days in December of 1987. I represented the Defendants, along with an associate, Susan C. Lawson.

This action was brought to recover approximately $4.5 million plus interest from the Defendants as a result of the stock purchase agreement and promissory note being executed by Golden Glow Holding Company in June of 1980 for the purchase of all of the outstanding stock of Golden Glow Coals, Inc., a coal mining company in Harlan County, Kentucky. The Defendants, Fred R. Langley and Larry E. Smith, were two of the three stockholders of Golden Glow Holding Company, and they guaranteed the promissory note of the Holding Company under certain circumstances. The seller was the decedent, J.B. Croley.

The Defendants individually guaranteed the promissory note described above based on their percentage interest in the holding company to the extent of any dividends paid by Golden Glow Coals, Inc. subsequent to the closing. The Defendants did not receive any actual dividend from said company, but the Plaintiff alleged that a "constructive" dividend had been paid to the Defendants, thereby invoking the guarantee of the promissory note. The Plaintiff argued that each time the Holding Company made a payment on the promissory note, a dividend was paid to the stockholders, thereby triggering the guarantee of the Defendants. The Defendants have argued that this was not the intention of the stock purchase agreement and that there can be no enforcement of a guarantee of a payment that has previously been made.

The Plaintiff also contended that the transfer of a unit train loadout facility from Golden Glow Coals, Inc. to CLS, a partnership consisting of the Defendants and the third stockholder. the transfer of a mineral lease from Golden Glow Coals, Inc. to CLS, and the refinancing of a Golden Glow Holding Company loan by Golden Glow Coals also constituted a constructive dividend which the Defendants denied.

The Plaintiff also sought recovery from the individual Defendants on the basis of an attempt to pierce the corporate veil of Golden Glow Holding Company. The Defendants contended that Golden Glow Holding Company was not a corporate shell and was used as a vehicle to purchase the stock of Golden Glow Coals, Inc. in a leveraged transaction which is commonplace. After the closing, CLS, the partnership, transferred certain assets from Golden Glow Coals, Inc. to the partnership. The Plaintiff contended that these transactions constituted fraud and justified a piercing of the corporate veil. Defendants contended that these transactions did not involve the Holding Company and that the transfers were based on sufficient consideration and for a valid business reason.

There has been no decision rendered by Judge Reed in this case.

The undersigned took many of the discovery depositions in this case; was involved in the settlement negotiations; planning for the trial, and the actual trial of the action.

a. The dates of the trial are as set out above.

b. The case was tried in the United States District Court, Eastern District of Kentucky, Lexington Division, before the Honorable Scott Reed, Judge, United States District Court, Eastern District of Kentucky, Barr and Limestone Streets, Lexington, Kentucky, 40507, (606) 233-2828.

c. Co-counsel was Susan C. Lawson, Esq. of Forester, Forester, Buttermore & Turner, P.S.C., P.O. Box 935, Harlan, Kentucky, 40831, (606) 573-7000.

Opposing counsel was Arthur L. Brooks, Esq. and Jennifer B. Coffman, Esq., 183 North Upper Street, Lexington, Kentucky, 40507, (606) 233-3366.

DENVILLE E. SLUSHER AND GERALDINE SLUSHER V. HARBERT CONSTRUCTION CORPORATION AND DINGO COAL COMPANY, INC., Harlan Circuit Court, Civil Action No. 83-Ci-417.

This was a quiet title action to coal property located in Harlan County, Kentucky. I represented the Defendant, Harbert Construction Corporation, along with an associate, Susan C. Lawson.

This quiet title action involved a ten acre tract of mountain land in Harlan County, Kentucky, from which the coal had been mined by an agent of Harbert Construction Corporation which claimed mineral title to the property. This action was brought by Denville E. Slusher, et ux who claimed he and his wife owned the property in question by deed or by adverse possession. Harbert denied the Plaintiffs' title to this property, but did not assert their title to same in a counterclaim.

Based on evidence presented by licensed surveyors or engineers of the parties, the Court determined that Harbert had correctly located the property in question and that the Plaintiffs failed their burden of proof to show adverse possession to the property or title to same based on a deed of record.

The bench trial occurred on February 11-12, 1986, and a decision was rendered by Judge Cornelius on December 4, 1986 in favor of the Defendant, Harbert Construction Corporation. This decision was affirmed by the Kentucky Court of Appeals on December 4, 1987, in a unanimous decision issued by Judges Clayton, Dyche and McDonald. The Court of Appeals decision was not published.

The undersigned took all of the discovery depositions in this action, of the Plaintiffs and their expert; counselled with and prepared Harbert's expert witnesses and other lay witnesses for trial and tried this case before the Harlan Circuit Court. The undersigned also reviewed and revised the brief submitted on behalf of the Defendant, Harbert, on appeal.

a. The dates of the trial are as set out above.

b. The case was tried in the Harlan Circuit Court before the Honorable Clarence A. Cornelius, Judge, Harlan Circuit Court, Harlan County Courthouse, Harlan, Kentucky, 40831, (606) 573-3242.

c. Co-counsel was Susan C. Lawson, Esq. of Forester, Forester, Buttermore & Turner, P.S.C., P.O. Box 935, Harlan, Kentucky, 40831, (606) 573-7000.

Opposing counsel was Henry S. Johnson, Esq., 205½ Central Street, Harlan, Kentucky, 40831, (606) 573-6162.

FINANCIAL STATEMENT

ATTACHMENT 2

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			
Cash on hand and in banks	11,600	00	
U.S. Government securities—add schedule	0		
Listed securities—add schedule	73,400	00	
Unlisted securities—add schedule	0		
Accounts and notes receivable:			
Due from relatives and friends	0		
Due from others	0		
Doubtful	0		
Real estate owned—add schedule	333,385	00	
Real estate mortgages receivable	0		
Autos and other personal property	250,000	00	
Cash value—life insurance	5,000	00	
Other assets—itemize:			
Retirement	270,000	00	
Stamps and coins	25,000	00	
Interest in law office	100,000	00	
Total assets	965,385	00	

LIABILITIES			
Notes payable to banks—secured	0		
Notes payable to banks—unsecured	1,600	00	
Notes payable to relatives	0		
Notes payable to others	0		
Accounts and bills due	0		
Unpaid income tax	0		
Other unpaid tax and interest	0		
Real estate mortgages payable—add schedule	79,385	00	
Chattel mortgages and other liens payable	6,000	00	
Other debts—itemize:	0		
Total liabilities	8[illegible],985	00	
Net worth	881,400	00	
Total liabilities and net worth	968,385	00	

CONTINGENT LIABILITIES			
As endorser, comaker or guarantor			
On leases or contracts			
Legal Claims			
Provision for Federal Income Tax			
Other special debt			

GENERAL INFORMATION			
Are any assets pledged? (Add schedule.)	NO		
Are you defendant in any suits or legal actions?	NO		
Have you ever taken bankruptcy?	NO		

SCHEDULE OF ASSETS

Listed Securities

Emerson Electric Company - 120 shares	$4,000.00
Duke Power Company - 100 shares	5,400.00
First Security Corporation (KY) - 1,000 shares	15,000.00
Prudential-Bache Research - 1,500 shares	19,000.00
Spencer Co., KY bonds	20,000.00
Madison, IND bonds	10,000.00
	$73,400.00

Real Estate

Home at Harlan, KY	$150,000.00
Villa at Amelia Island, FL	100,000.00
1/2 interest - First Street, Harlan, KY	50,000.00
1/5 interest - First Street, Harlan, KY	33,385.00
	$333,385.00

SCHEDULE OF LIABILITIES

Real Estate Mortgages	
Home	$46,000.00
Office building	33,385.00
	$79,385.00

AMERICAN BAR ASSOCIATION

Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIRMAN
Harold R. Tyler, Jr.
30 Rockefeller Plaza
New York, NY 10112

FIRST CIRCUIT
Ralph I. Lancaster, Jr.
One Monument Square
Portland, ME 04101

SECOND CIRCUIT
William E. Willis
125 Broad Street
New York, NY 10004

THIRD CIRCUIT
Jerome J. Shestack
Suite 3600
1600 Market Street
Philadelphia, PA 19103

FOURTH CIRCUIT
James A. Howard, Sr.
1410 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, VA 23510

FIFTH CIRCUIT
Lloyd Lochridge
Suite 1300
919 Congress Avenue
Austin, TX 78701

SIXTH CIRCUIT
John C. Elam
52 East Gay Street
Columbus, OH 43215

SEVENTH CIRCUIT
Joan M. Hall
Suite 4300
One IBM Plaza
Chicago, IL 60611

EIGHTH CIRCUIT
James W. Hewitt
Post Office Box 80268
1815 Y Street
Lincoln, NE 68501

NINTH CIRCUIT
J. David Andrews
1900 Washington Building
Seattle, WA 98101

Samuel L. Williams
45th Floor
333 South Grand Avenue
Los Angeles, CA 90071

TENTH CIRCUIT
James A. Clark
Suite 1900
303 East 17th Avenue
Denver, CO 80203

ELEVENTH CIRCUIT
M. Roland Nachman, Jr.
Post Office Box 78
2 Dexter Avenue
Montgomery, AL 36101

DISTRICT OF COLUMBIA CIRCUIT
James J. Bierbower
International Square
Suite 1275
1875 I Street, NW
Washington, DC 20006

FEDERAL CIRCUIT
John D. Lane
Suite 600
1666 K Street, NW
Washington, DC 20006

BOARD OF GOVERNORS LIAISON
Sharp Whitmore
2085 Gird Road
Fallbrook, CA 92028

STAFF LIAISON
Irene R. Emsellem
2nd Floor, South Lobby
1800 M Street, NW
Washington, DC 20036
(202) 331-2210
ABA/NET: ABA 461

April 27, 1988

CONFIDENTIAL

The Honorable Joseph R. Biden, Jr.
Chairman, United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Re: KARL S. FORESTER
United States District Court
for the Eastern District of Kentucky

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Karl S. Forester for appointment as Judge of the United States District Court for the Eastern District of Kentucky.

Our Committee is unanimously of the opinion that Mr. Forester is "Qualified" for this appointment.

Sincerely yours,

Harold R. Tyler, Jr.
Harold R. Tyler, Jr.
Chairman

cc: All Committee Members